



## NATIONAL RISK ASSESSMENT FOR DETENTION ÉVALUATION NATIONALE DES RISQUES EN MATIÈRE DE DÉTENTION

The information you provide in this document is collected under the authority of section 16(3) of the Immigration and Refugee Protection Act for the purpose of administering the detentions program. The information may be used for the purposes of administration and enforcement of immigration legislation, for program evaluation and reporting purposes or may otherwise be disclosed pursuant to subsection 8(2) of the Privacy Act. The information may be shared with provincial correctional facilities and federal, provincial and municipal police forces for the purpose of detainee management.

Refusal to provide the requested personal information could lead to errors in the detainee's detention placement. Individuals have the right to access and to make corrections to their personal information under the Privacy Act. The information collected is described within the CBSA Programs Information and Information Holdings CBSA PPU 1107. Should you have concerns about the CBSA's handling of your personal information you have a right to file a complaint with the Privacy Commissioner of Canada.

L'information fournie dans le présent formulaire, recueillie en vertu du paragraphe 16(3) de la *Loi sur l'immigration et la protection des réfugiés*, est requise pour administrer le programme des détentions. Les renseignements peuvent être utilisés et divulgués à des fins d'application et d'exécution de loi en matière d'immigration, aux fins d'évaluation des programmes et de la production de rapports, ou à toute autre fin prévue au paragraphe 8(2) de la *Loi sur la protection des renseignements personnels*. Les renseignements peuvent être communiqués aux établissements correctionnels provinciaux et aux corps policiers fédéraux, provinciaux ou municipaux aux fins de la gestion du détenu.

Le refus de fournir l'information personnelle demandée pourrait causer des erreurs dans le placement en détention du détenu. Vous avez le droit d'accéder à vos renseignements personnels et d'y apporter des corrections en vertu de la *Loi sur la protection des renseignements personnels*. Les renseignements recueillis sont décrits dans les renseignements sur les programmes et les fonds de renseignement de l'ASFC sous le fichier de renseignements personnels ASFC PPU 1107. Si vous avez des préoccupations au sujet du traitement de vos renseignements personnels par l'ASFC, vous avez le droit de déposer une plainte auprès du Commissaire à la vie privée du Canada.

### PERSONAL INFORMATION - RENSEIGNEMENTS PERSONNELS

|  |  |   |  |  |  |
|--|--|---|--|--|--|
| Surname - Nom de famille   |  | Given name(s) - Prénom(s)   |  | Today's Date - Date du jour<br>D - J   M   Y - A |  |
| Gender Identity - Identité de genre<br><input type="checkbox"/> Male<br>Homme <input type="checkbox"/> Female<br>Femme <input type="checkbox"/> Another Gender<br>Un autre genre |  | Date of Birth - Date de naissance<br>D - J   M   Y - A                    |  | UCI - Numéro IUC                                 |  |
| Citizenship(s) - Citoyenneté(s)  |  | Office or Current Detention Location - Bureau ou lieu de détention actuel |  | Language(s) Spoken - Langue(s) parlée(s)         |  |

### DETENTION PLACEMENT ASSESSMENT - ÉVALUATION DU PLACEMENT DE DÉTENTION

The following section will assist officers in making an informed decision on detention placement based on a set of factors. The risk factor points must be added, whereas the vulnerability factor points must be subtracted. Answer each question, write the number of points in the right hand-column and consolidate the total score on the next page. The total score will be used in the decision section.

La section suivante aidera les agents à prendre une décision éclairée sur le placement en détention en fonction d'un ensemble de facteurs. Les points des facteurs de risque doivent être additionnés alors que ceux du facteur de vulnérabilité doivent être soustraits. Répondez à chaque question, indiquez le nombre de points dans la colonne de droite et indiquez le pointage total à la page suivante. Le pointage total sera utilisé dans la section de la décision.

| RISK FACTORS - FACTEURS DE RISQUE   |   |  | Points   |
|---|---|--|--|
| 1. Reasonable grounds to suspect an inadmissibility due to security grounds (sec. 34), including security certificates (sec. 77).<br>1. Motifs raisonnables de soupçonner une interdiction de territoire pour des motifs de sécurité (art. 34), y compris les certificats de sécurité (art. 77).  | <input type="checkbox"/> No (0)<br>Non (0)                  | <input type="checkbox"/> Yes (6)<br>Oui (6)                  |  |
| 2. Reasonable grounds to suspect an inadmissibility due to organized criminality (sec. 37).<br>2. Motifs raisonnables de soupçonner une interdiction de territoire pour activités de criminalité organisée (art. 37).   | <input type="checkbox"/> No (0)<br>Non (0)                  | <input type="checkbox"/> Yes (6)<br>Oui (6)                  |  |
| 3. Number of years passed since the last outstanding charge or conviction that may cause inadmissibility for serious criminality or criminality (sec. 36).<br>3. Nombre d'années écoulées depuis la dernière accusation en instance ou condamnation pouvant entraîner une interdiction de territoire pour grande criminalité ou criminalité (art. 36).  | <input type="checkbox"/> Ten or More (0)<br>Dix ou plus (0) | <input type="checkbox"/> Five to Nine (2)<br>Cinq à Neuf (2) | <input type="checkbox"/> Four or Less (3)<br>Quatre ou moins (3) |
| 4. Number of outstanding charges or convictions involving threats or violent crimes.<br>4. Nombre d'accusations en instance ou de condamnations impliquant des menaces ou un crime violent.   | <input type="checkbox"/> None (0)<br>Aucun (0)              | <input type="checkbox"/> One or Two (4)<br>Un ou deux (4)    | <input type="checkbox"/> Three or More (7)<br>Trois ou plus (7)  |
| 5. Has an outstanding charge or been convicted of a severely violent crime (e.g. murder, aggravated assault, assault with a weapon, aggravated sexual assault, sexual assault with a weapon, torture or genocide).<br>5. A une accusation en instance ou a été reconnue(e) coupable d'un crime de violence grave (par exemple : meurtre, voies de fait graves, agression armée, agression sexuelle grave, agression sexuelle armée, torture ou génocide).                                       | <input type="checkbox"/> No (0)<br>Non (0)                  | <input type="checkbox"/> Yes (3)<br>Oui (3)                  |  |
| 6. In the last two years, number of serious incidents during arrest (e.g. active resistance) or a major breach of detention facility rules (e.g. violence towards another person) while in custody.<br>6. Au cours des deux dernières années, nombre d'incidents graves au cours de l'arrestation (par exemple : résistance active) ou en raison d'un manquement majeur aux règles de l'établissement de détention (par exemple : violence envers une autre personne) au cours de la détention. | <input type="checkbox"/> None (0)<br>Aucun (0)              | <input type="checkbox"/> One or Two (2)<br>Un ou deux (2)    | <input type="checkbox"/> Three or More (4)<br>Trois ou plus (4)  |
| 7. Previously escaped or attempted escape from legal custody.<br>7. Évasion ou tentative d'évasion antérieure d'une garde légale.   | <input type="checkbox"/> No (0)<br>Non (0)                  | <input type="checkbox"/> Yes (4)<br>Oui (4)                  |  |
| 8. Remains the subject of an unexecuted criminal warrant for arrest.<br>8. Fait l'objet d'un mandat criminel d'arrestation non-exécuté.   | <input type="checkbox"/> No (0)<br>Non (0)                  | <input type="checkbox"/> Yes (3)<br>Oui (3)                  |  |
| Subtotal - Sous-total :   |   |  |  |

| VULNERABILITY FACTOR - FACTEUR DE VULNÉRABILITÉ   |  |
|---|--|
| <p>Vulnerable persons in the detention context are defined as: pregnant women and nursing mothers; minors (under 18 years of age); persons suffering from severe medical condition or disability; persons suffering from restricted mobility; persons with suspected or known mental illness (includes suicidal and self-harmful persons); and victims of human trafficking. Only one vulnerable category can be selected even if the detainee meets multiple categories.</p> <p>Les personnes vulnérables dans le contexte de la détention sont les suivantes : les femmes enceintes et les mères allaitantes; les mineurs (âgés de moins de 18 ans); les personnes ayant un trouble médical ou une déficience grave; les personnes à mobilité réduite; les personnes atteintes d'une maladie mentale soupçonnée ou connue (dont les personnes suicidaires ou ayant un comportement autodestructeur); et les victimes de la traite de personnes. Une seule catégorie vulnérable peut être sélectionnée même si le détenu répond à plusieurs catégories.</p>  |  |
| <p>9. Is the detainee a vulnerable person?<br/>           9. Est-ce que le détenu est une personne vulnérable?</p> <p>If yes specify :<br/>           Si oui précisez :</p>   | <p><input type="checkbox"/> No (0)<br/>Non (0)</p> <p><input type="checkbox"/> Yes (-2)<br/>Oui (-2)</p>   |
| <p style="text-align: right;"><b>Total score - Pointage total :</b></p>   |  |
| DECISION - DÉCISION   |  |
| <p>Based on the total sum of points attributed to the risk and vulnerability factors, a detainee should be detained in a detention facility according to the total score, as follows: 0 to 4 points = IHC (where available), 5 to 9 points = IHC or provincial correctional facility (default to IHC where risk can be mitigated), 10 points or more = provincial correctional facility. Ports of entry and inland offices near an IHC can refer detainees for placement in an IHC based on the detainee's NRAD score, if transport can be easily facilitated the same day. Ports of entry and inland enforcement offices not located in close proximity to an IHC can solely refer detainees for placement in a provincial correctional facility.</p> <p>Selon le pointage total obtenu pour les facteurs de risque et de vulnérabilité, le détenu sera détenu dans un des centres de détention suivants : de 0 à 4 points = CSI (lorsque possible), de 5 à 9 points = CSI ou établissement correctionnel provincial (CSI par défaut lorsque le risque peut être atténué) et 10 points et plus = établissement correctionnel provincial. Les points d'entrée et les bureaux intérieurs situés à proximité d'un CSI peuvent orienter les détenus aux fins de placement dans un CSI en fonction du score obtenu à l'ENRD si le transport peut être organisé le jour même. Les points d'entrée et les bureaux intérieurs d'exécution de la loi qui ne sont pas situés à proximité d'un CSI peuvent seulement orienter les détenus aux fins de placement dans un établissement correctionnel provincial.</p> |  |
| <p>For each completed assessment, the detainee must be informed of the factors taken into consideration and they should be afforded an opportunity to give details on risk and vulnerability factors before the chosen facility type has been finalized. The officer is not bound by those comments; however, they must be taken into consideration. Has the detainee been afforded this opportunity?</p> <p>À chaque évaluation réalisée, le détenu doit être informé des facteurs étudiés et il doit avoir l'occasion de présenter des précisions concernant les facteurs de risque et de vulnérabilité avant que le choix du type d'établissement ne soit finalisé. L'agent ne doit pas nécessairement suite à ces observations, cependant, il doit en tenir compte. Le détenu a-t-il eu cette occasion?</p> <p>If no specify:<br/>           Si non, précisez :</p>   |  |
| <p>Detainee placement decision:<br/>           Décision concernant le placement du détenu :</p> <p><input type="checkbox"/> IHC (where available)<br/>CSI (là où disponible)</p> <p><input type="checkbox"/> Provincial Correctional Facility<br/>Établissement correctionnel provincial</p>  |  |
| ADDITIONAL INFORMATION - INFORMATION SUPPLÉMENTAIRE   |  |
| <p>In this section, specify any additional information supporting the officer's decision (e.g. details of key factors, the detainee's behaviour, details given by the detainee, incidents and changes in the facility type for detention).</p> <p>Précisez dans la présente section toute autre information justifiant la décision de l'agent (par exemple : précisions pour les facteurs principaux, le comportement du détenu, précisions fournies par le détenu, incidents et changement du type d'établissement pour la détention).</p>   |  |
| Name of Officer - Nom de l'agent  | Signature  |
| MANAGEMENT REVIEW - EXAMEN PAR LA DIRECTION   |  |
| <p>Management review can be done in person or remotely and it must be done prior to the placement of a detainee.</p> <p>The initial detention placement shall be reviewed by:</p> <ul style="list-style-type: none"> <li>A Superintendent (FB05) or higher regional authority for all Port of Entry cases; or</li> <li>An Inland Supervisor or Manager or higher regional authority for all Inland cases.</li> </ul> <p>If the reviewing authority does not concur with the chosen facility type for detention, a subsequent risk assessment for detention must be completed.</p>   | <p>L'examen par la direction peut être effectué en personne ou à distance et doit être fait avant le placement d'un détenu.</p> <p>Le placement en détention initial doit être contrôlé par :</p> <ul style="list-style-type: none"> <li>Un surintendant (FB05) ou une autorité régionale supérieure pour tous les cas aux points d'entrée; ou</li> <li>Un superviseur ou gestionnaire ou une autorité régionale supérieure pour tous les cas traités dans les bureaux intérieurs.</li> </ul> <p>Si l'autorité de contrôle n'est pas d'accord avec le type d'établissement pour la détention choisi, une évaluation subséquente des risques en matière de détention doit être effectuée.</p> |
| Name of Superintendent (port of entry cases) or Inland Supervisor or Manager (inland office cases)<br>Nom du surintendant (cas de port d'entrée) ou superviseur ou gestionnaire (cas de bureau intérieur)   | <p>Reviewed - Examen</p> <p><input type="checkbox"/> In person<br/>En personne</p> <p><input type="checkbox"/> By phone or email<br/>Au téléphone ou par courriel</p>  |

## DETAINEE MEDICAL NEEDS BESOINS MÉDICAUX DU DÉTENU

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Refusal to provide the requested personal information could lead to errors in the triage of the detainee's medical needs. Individuals have the right to access and to make corrections to their personal information under the Privacy Act. The information collected is described within the CBSA Programs Information and Information Holdings CBSA PPU 1107. Should you have concerns about the CBSA's handling of your personal information you have a right to file a complaint with the Privacy Commissioner of Canada.

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Le refus de fournir l'information personnelle demandée pourrait causer des erreurs dans le tri des besoins médicaux du détenu. Vous avez le droit d'accéder à vos renseignements personnels et d'y apporter des corrections en vertu de la *Loi sur la protection des renseignements personnels*. Les renseignements recueillis sont décrits dans les renseignements sur les programmes et les fonds de renseignement de l'ASFC sous le fichier de renseignements personnels ASFC PPU 1107. Si vous avez des préoccupations au sujet du traitement de vos renseignements personnels par l'ASFC, vous avez le droit de déposer une plainte auprès du Commissaire à la vie privée du Canada.

### PERSONAL INFORMATION - RENSEIGNEMENTS PERSONNELS

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| Surname - Nom de famille  |  | Given name(s) - Prénom(s)                          |  | Today's Date - Date du jour<br>D - J M Y - A |  |
| Gender Identity - Identité de genre<br><input type="checkbox"/> Male Homme <input type="checkbox"/> Female Femme <input type="checkbox"/> Another Gender Un autre genre |  | Date of Birth - Date de naissance<br>D - J M Y - A |  | UCI - Numéro ICU                             |  |
| Citizenship(s) - Citoyenneté(s)   |  |  | Language(s) Spoken - Langue(s) parlée(s) |  |  |

### HEALTH CONDITION - ÉTAT DE SANTÉ

All health-related information contained in this section is based on information stated by the detained individual. It is collected for the purpose of assessing current health needs, and should not be used as a substitute for a consultation with a health care professional. Mark with an "X" the appropriate boxes to indicate a current diagnosed health need.

L'information contenue dans la présente section se fonde sur les déclarations du détenu. Elle est recueillie dans le but d'évaluer les besoins actuels en matière de santé; elle ne remplace pas une consultation avec un professionnel de la santé. Inscrivez un « X » dans les cases appropriées pour indiquer un élément diagnostiqué correspondant à l'état de santé actuel.

|  |  |  |  |
|--|--|--|--|
| <input type="checkbox"/> Refuse to answer<br>Refus de répondre   | <input type="checkbox"/> No health needs<br>Aucun besoin de santé                        | <input type="checkbox"/> Malaria or Tuberculosis<br>Paludisme ou tuberculose | <input type="checkbox"/> Respiratory problem<br>Trouble respiratoire |
| <input type="checkbox"/> Heart disease<br>Maladie du cœur  | <input type="checkbox"/> Diabetes or Hypoglycemia<br>Diabète ou hypoglycémie             | <input type="checkbox"/> Hepatitis<br>Hépatite                               |  |
| <input type="checkbox"/> High blood pressure<br>Hypertension   | <input type="checkbox"/> Mobility impaired<br>Mobilité réduite                           | <input type="checkbox"/> Allergy(ies) (specify):<br>Allergie(s) (précisez)   |  |
| <input type="checkbox"/> Surgery or hospitalization in the past year<br>Chirurgie ou hospitalisation au cours de la dernière année | <input type="checkbox"/> Contagious disease (specify):<br>Maladie contagieuse (précisez) |  |  |

### MENTAL HEALTH - SANTÉ MENTALE

|   |  |   |
|---|--|---|
| <input type="checkbox"/> Refusal to answer<br>Refus de répondre   | <input type="checkbox"/> No mental health disorder<br>Aucun trouble de santé mentale                 | <input type="checkbox"/> Post-traumatic stress disorder<br>Trouble de stress post-traumatique |
| <input type="checkbox"/> Alcohol or drug dependence<br>Alcoolisme ou toxicomanie  | <input type="checkbox"/> Schizophrenia or psychotic disorder<br>Schizophrénie ou trouble psychotique | <input type="checkbox"/> Anxiety or panic disorder<br>Trouble d'anxiété ou de panique         |
| <input type="checkbox"/> Depression or bipolar disorder<br>Dépression ou trouble bipolaire  |  |   |
| Has the detainee ever had or has thoughts about hurting himself/herself or attempting suicide? (If yes, when):<br>Est-ce que le détenu a déjà pensé ou pense-t-il/elle à se blesser ou à se suicider? (si oui, quand) :                             |  | <input type="checkbox"/> Yes Oui <input type="checkbox"/> No Non                              |
| Has the detainee ever attempted suicide before? (If yes, when):<br>Est-ce que le détenu a déjà tenté de se suicider? (si oui, quand) :  |  | <input type="checkbox"/> Yes Oui <input type="checkbox"/> No Non                              |
| Does the detainee have a family member or a loved one who has attempted or committed suicide? (If yes, when):<br>Est-ce que le détenu a un membre de sa famille ou un de ses proches qui a tenté de se suicider ou s'est suicidé? (si oui, quand) : |  | <input type="checkbox"/> Yes Oui <input type="checkbox"/> No Non                              |

This is not a medical diagnosis. The information is collected only for the purpose of assessing health needs.  
Ce document n'est pas un diagnostic médical. L'information est recueillie seulement pour évaluer les besoins en matière de santé.

## EMERGENCY CONTACT INFORMATION - PERSONNES À JOINDRE EN CAS D'URGENCE

Upon the detained individual's request, the Canada Border Services Agency (CBSA) will contact the below-named individual if a life threatening health condition or death occurs during the detention and share personal information regarding the client concerned, if needed.

À la demande du détenu, l'Agence des services frontaliers du Canada (ASFC) communiquera avec la personne nommée ci-dessous si un état de santé mettant la vie en danger ou un décès survient au cours de la période de détention et communiquera les renseignements personnels de la personne concernée, au besoin.

☐ The detainee did not wish to give an emergency contact  
Le détenu n'a pas souhaité donner le nom d'une personne avec qui communiquer en cas d'urgence

|                             |                                |  |                                   |
|-----------------------------|--------------------------------|--|-----------------------------------|
| Name - Nom                  |                                | Relationship to client - Lien avec le client |                                   |
| Phone no. - N° de téléphone |                                | Email - Courriel                             |                                   |
| Street no. - N° de rue      | Street name - Nom de rue       | P.O. box/RR No. - Case postale/RR            | Apt. - App.                       |
| City - Ville                | Province/State - Province/État | Country - Pays                               | Postal/Zip code - Code postal/ZIP |

## OFFICER'S OBSERVATIONS - REMARQUES DE L'AGENT

Has the detainee consumed prescribed medication or was medication found during the search of the detainee or their personal belongings?  
Est-ce que le détenu consomme des médicaments sous ordonnance ou est-ce que des médicaments ont été trouvés durant la fouille de  
du détenu ou de ses biens personnels? ☐ Yes Oui ☐ No Non

(If yes, specify):  
(Si oui précisez) :

Does the detainee appear to be disoriented, intoxicated, and/or confused?  
Le détenu semble-t-il désorienté, ivre ou confus? ☐ Yes Oui ☐ No Non

Does the detainee demonstrate any unusual behaviour(s)?  
Le détenu a-t-il un comportement inhabituel? ☐ Yes Oui ☐ No Non

(If yes, specify):  
(Si oui précisez) :

## ADDITIONAL INFORMATION - INFORMATION SUPPLÉMENTAIRE

Please provide more detailed information related to answers on this form (e.g. the detainee refuses to complete the form or makes illogical or incongruous comments, evidence of cutting scars or self-harm injuries).

Veuillez préciser les réponses aux questions du formulaire (par exemple, le détenu refuse de remplir le formulaire, fait des commentaires illogiques ou incongrus ou présente des cicatrices de coupures ou des blessures d'automutilation).

Each completed Detainee Medical Needs assessment must be placed in the detainee's case file and a copy of the form must be provided to:

- The detainee; and
- The IHC or the provincial correctional facility.

Until the person is released from detention, a new assessment must be completed at least once every 60 days after every assessment if detainees are detained in a provincial correctional facility; or sooner if the detainee self-identifies a change in their medical condition or if a possible change in their medical condition is observed by any custodial staff regardless of the detention facility.

Chaque évaluation des besoins médicaux du détenu réalisée doit être versée au dossier du détenu et une copie du formulaire doit être remise :

- au détenu; et
- au CSI ou à l'établissement correctionnel provincial.

Jusqu'à ce que la personne soit mise en liberté, une nouvelle évaluation des renseignements médicaux du détenu doit être réalisée au moins tous les 60 jours après chaque évaluation si la personne est détenue dans un établissement correctionnel provincial ou plus tôt si le détenu signale un changement de son état de santé, ou si un changement possible de son état de santé est observé par tout membre du personnel de garde, et ce, peu importe l'établissement de détention.

|                                  |           |
|----------------------------------|-----------|
| Name of Officer - Nom de l'agent | Signature |
|----------------------------------|-----------|

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# ENF 20

## Detention

Canada

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## **Updates to chapter**

### **Listing by date**

#### **2020-03-23**

Multiple sections have been reorganized to ease the reading.

Section 4.3, Forms and publications, Detention Cell Log and Instructions (BSF481) and Detention Cell Log (BSF481-1) have been merged. BSF508, previously named Review of Detention by Officer, has been revised and renamed to Detention Notes.

Section 6.6, Factors: identity not established, paragraphs on cooperation have been revised.

Section 6.7, Factors: detention on entry to complete the examination, clarifications have been added regarding urgent medical treatments.

Section 6.10, Other regulatory factors and best interests of the directly affected child, and 6.11, Detention of minor children (under 18 years of age), have been updated following the introduction of two IRPR amendments.

Section 7, Detentions facilities, has been updated.

Section 9, Procedure: detention, the table has been updated.

Section 9.1, Data entry, has been updated.

Section 9.3, Order for Detention, has been created.

Section 9.4, Detainee medical needs, subsequent assessment requirements and section 9.5, Placement: national risk assessment for detention have been revised.

Section 9.6, Management review of detention cases, has been revised to streamline the reviewing process.

Section 10.2, In-custody death or life-threatening condition notification, has been created.

Sections 11 to 11.6 have been created to clarify the placement and transfer of detainees from a non-IHC region to an IHC.

Section 12, Procedure: release by officer before the first detention review, the table has been updated.

Section 13, Transitional measures, has been erased.

Annex A, Detention Checklist, has been created.



Annex B, National Directive for the Detention or Housing of Minors, has been updated following the introduction of two IRPR amendments.

## **2018-11-20**

Section 3.1, Authority to detain a person, Section 3.2, Regulatory factors and conditions, Section 5.3, Grounds for detention and section 5.8 have been updated with the coming into force of the Protecting Canada's Immigration System Act.

Section 3.3, Forms and publications, available gender identities has been clarified.

Sections 5.4 to 5.8 have been moved and updated with new detention factors.

Section 5.9, Factors: mandatory arrest and detention of designated foreign national, has been created.

The section on alternatives to detention has been removed and transferred to ENF 34.

Section 5.12, Housing of minor children (under 18 years of age), has been added.

Section 5.13, Vulnerable groups, the term "vulnerable groups" has been renamed "vulnerable persons".

Sections 5.13 and 5.14, redundant text has been moved and a new jurisprudence case has been added.

Section 7, Detention: procedure, has been reshaped to facilitate its use by officers.

Section 7.2, Officer's detention notes, has been moved.

Section 7.3, Management review of detention decision, has been updated.

Section 8, Care of the detainee while awaiting transfer, and Section 8.1, Procedure: suicidal and self-harmful detainee, have been added.

Section 9.1, National risk assessment for detention, clarifications have been added regarding offences where a detainee was found not guilty, and common crime examples have been added.

Section 9.3, Vehicular transport of detainees, has been added.

Section 10, Procedure: release by officer before the first detention review, has been modified, and section 10.1 has been added with information regarding release of designated foreign nationals.

Section 12.1, Canadian Red Cross, has been updated to add information regarding the CBSA notification requests.

Annex A, Detention Checklist, has been created.

Annex C, Child protection services and family centres, was been updated with information for the Atlantic and Prairies regions.

## 2018-02-12

ENF 20 has been updated to reflect changes to the National Risk Assessment and Detainee Medical Needs forms. Further, changes have been made to reflect the decision-making process regarding detention. These changes will ensure that officers have clear guidance regarding detention decisions and placement of a detainee in a Canada Border Services Agency Immigration Holding Centre or provincial correctional facility.

Section 1, What this chapter is about, has been updated to add contact information.

Section 3.3, Forms and publications, has been amended, and the brochure titled "Information for People Detained Under the *Immigration and Refugee Protection Act*" has been added.

Section 5.8, Identity, has been amended to remove information contained in other sections.

Section 5.10, Detention of minor children (under 18 years of age), has been amended, and a new reference to the National Directive for the Detention or Housing of Minors has been added in Annex A.

Section 5.11, Vulnerable groups, has been moved and updated to include new vulnerable groups.

Section 5.12, Alternatives to detention, and section 5.13, Third party risk management programs, have been removed as their content will be in ENF 34.

Multiple sections have been updated to reflect the name change of Citizenship and Immigration Canada (CIC) to Immigration, Refugees and Citizenship Canada (IRCC) and of the Minister of Citizenship and Immigration to the Minister of Immigration, Refugees and Citizenship.

Section 6 has been updated with new definitions for "alternatives to detention", "best interests of the child" and "unaccompanied minor".

Section 8.1, Procedure: review of detention decision, has been created to clarify when the officer's initial detention decision must be reviewed by another officer.

Section 8.2, Informing the Immigration and Refugee Board of a detention review, has been created.

Sections 9, 9.1, 9.2 and 9.3, Transfer of a detainee, have been rewritten to include new directives regarding the national risk assessment for detention form, the detainee medical needs form and the vehicular transport of detainees.

Section 10, Procedure: release by officer, has been updated to remove information contained in other sections.

Sections 11, 11.1, 11.2 and 11.3, Place of detention, have been moved and revised to include types of detention facilities, levels of risk and new detention agreements with provincial governments.

Section 12, Detention program monitoring, has been added.

Section 13, Transitional measures, has been moved.

## **2015-12-22**

The detention forms have been updated and converted to the CBSA numbering system (BSF304, 579, 507 E, 508 E, 566, 524, 481, 481-1, 578, 754, 754-1, 674 and 735).

Section 8, Procedure: detention, has been updated to remove information contained in other chapters.

Section 9, Procedure: national risk assessment for detention, and section 9.1, National risk reassessment for detention, have been created to include a new requirement to ensure the safety and well-being of detainees.

Section 12, Place of detention, has been amended to reflect the closure of the Kingston Immigration Holding Centre and the maximum length of detention at the Vancouver Immigration Holding Centre has been reduced to 48 hours.

Multiple sections have been updated following the Field Operations Support System (FOSS) decommissioning.

## 1. What this chapter is about

This chapter offers guidance to Canada Border Services Agency (CBSA) officers at ports of entry (POE) and at inland enforcement offices who are delegated to detain under the *Immigration and Refugee Protection Act* (IRPA). It also states the principles underlying CBSA's detention policy and describes the administrative and legal framework within which detention operates.

References to IRPA appear in the text with an "A" prefix followed by the section number. References to the *Immigration and Refugee Protection Regulations* (IRPR) appear with an "R" prefix followed by the section number.

Requests for clarification, questions and comments in relation to this manual should be addressed to the CBSA Detentions Unit Programs Branch's generic mailbox at [Detention-Programs@cbsa-asfc.gc.ca](mailto:Detention-Programs@cbsa-asfc.gc.ca).

## 2. Definitions

|                                    |   |
|------------------------------------|---|
| Any procedure under the IRPA       | "Any procedure" refers to any process with regard to a person's application or status, whether it is initiated by the person, by IRCC or by the CBSA, that has arisen in the normal course of the immigration system. "Any procedure" does not include investigations.  |
| Alternatives to detention (ATDs)   | Refer to <a href="#">ENF 34, Alternatives to Detention</a>  |
| Best Interests of the Child (BIOC) | An international principle to ensure children enjoy the full and effective benefit of all their rights recognized in Canadian law and the <a href="#">Convention on the Rights of the Child</a> . It is also a rule of procedure that includes an assessment of the possible impact (positive or negative) of a decision regarding the child or children concerned. |
| Reasonable grounds to believe      | Reasonable grounds to believe are a set of facts and circumstances that would convince a normally prudent and informed person. They are not mere suspicions. The opinion must have an objective basis.  |
| Reasonable grounds to suspect      | Reasonable grounds to suspect, a lower standard than to believe, are a set of facts or circumstances that would lead the ordinarily cautious and prudent person to have a hunch or suspicion.   |
| Protected person under A95(2)      | A protected person is a foreign national on whom refugee protection is conferred under A95(1), and whose claim or application has not subsequently been deemed to be rejected under A108(3), A109(3) or A114(4).  |
| Minor (child)                      | A minor is defined under the IRPA and the <i>Convention on the Rights of the Child</i> as a person under the age of 18. They are considered to be a minor in the federal context (R249).  |

|   |   |
|---|---|
| Criminal organization within the meaning of A121.1(1) | A criminal organization within the meaning of A121.1(1) means a criminal organization as defined in <u>subsection 467.1(1) of the <i>Criminal Code</i></u> .    |
| Unaccompanied minor                                   | A minor or siblings travelling together who do not arrive in Canada with their parent(s) or legal guardian(s) or do not arrive in Canada to join such a person. |

### 3. Program objectives

A3(1) and (2), which outline the objectives of IRPA, list two objectives that are directly linked to the CBSA's responsibility for the enforcement of IRPA regarding both immigration and refugee programs:

- to protect the health and safety of Canadians and to maintain the security of Canadian society; and
- to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks.

The power to detain permanent residents and foreign nationals meets these objectives by:

- protecting Canadian society by detaining those who pose a danger to the public or security risk
- supporting the removal of those who have been denied access to Canadian territory including those who are criminals, security risks, or inadmissible for crimes against humanity; and
- supporting the examination and investigation processes, which are key elements in ensuring the enforcement of IRPA.

## 4. The act and regulations

### 4.1. Authority to detain a person

The following sections identify the grounds on which an officer may arrest and detain a permanent resident or foreign national. For further information on arrest procedures, please see ENF 7, Investigations and Arrests.

| For information about  | Section of IRPA |
|--|-----------------|
| <b>Arrest and detention with warrant</b>   | A55(1)          |
| An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and: |                 |

|  |          |
|--|----------|
| <ul style="list-style-type: none"> <li>• is a danger to the public; or</li> <li>• is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2).</li> </ul>   |          |
| <p><b>Arrest and detention without warrant</b></p> <p>An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,</p> <ul style="list-style-type: none"> <li>• who the officer has reasonable grounds to believe is inadmissible; and <ul style="list-style-type: none"> <li>○ is a danger to the public; or</li> <li>○ is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or</li> </ul> </li> <li>• if the officer is not satisfied as to the identity of the foreign national in the course of any procedure under IRPA.</li> </ul>  | A55(2)   |
| <p><b>Detention on entry</b></p> <p>A permanent resident or a foreign national may, on entry into Canada, be detained if an officer</p> <ul style="list-style-type: none"> <li>• considers it necessary to do so in order for the examination to be completed; or</li> <li>• has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of <ul style="list-style-type: none"> <li>○ security,</li> <li>○ violating human or international rights,</li> <li>○ serious criminality,</li> <li>○ criminality or</li> <li>○ organized criminality.</li> </ul> </li> </ul>   | A55(3)   |
| <p><b>Mandatory arrest and detention — designated foreign national</b></p> <p>If a designation is made under subsection A20.1(1), an officer must</p> <ul style="list-style-type: none"> <li>• detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation; or</li> <li>• arrest and detain without a warrant — or issue a warrant for the arrest and detention of — a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation.</li> </ul> | A55(3.1) |
| <p><b>Notice to the Immigration Division</b></p>   | A55(4)   |

|   |        |
|---|--------|
| If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.  |        |
| <b>Release: officer</b><br><br>An officer may order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. The officer may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary. | A56(1) |
| <b>Minor children</b><br><br>It is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.  | A60    |
| <b>Ministers' warrant</b><br><br>The Minister and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.  | A81    |

## 4.2. Regulatory factors and conditions

Regulations on detention and release have been developed under section A61. Part 14 of IRPR is constructed as follows:

|  |      |
|--|------|
| <b>Factors that shall be considered</b>  | R244 |
| <b>Factors: Flight risk</b>  | R245 |
| <b>Factors: Danger to the public</b>   | R246 |
| <b>Factors: Identity not established</b>   | R247 |
| <b>Other factors</b><br><br>If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release: <ul style="list-style-type: none"> <li>the reason for detention;</li> <li>the length of time in detention;</li> <li>whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;</li> </ul> | R248 |

|  |        |
|--|--------|
| <ul style="list-style-type: none"> <li>• any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned; and</li> <li>• the existence of alternatives to detention (ATDs).</li> </ul>  |        |
| <p><b>Best interests of the child</b></p> <p>For the purpose of paragraph 248(f) and for the application, in respect of children who are under 18 years of age, of the principle affirmed in section A60, that a minor child shall be detained only as a measure of last resort, the following factors must be considered when determining the best interests of the child:</p> <ul style="list-style-type: none"> <li>• the child's physical, emotional and psychological well-being;</li> <li>• the child's healthcare and educational needs;</li> <li>• the importance of maintaining relationships and the stability of the family environment, and the possible effect on the child of disrupting those relationships or that stability;</li> <li>• the care, protection and safety needs of the child; and</li> <li>• the child's views and preferences, provided the child is capable of forming their own views or expressing their preferences, taking into consideration the child's age and maturity.</li> </ul> <p>Marginal note: Degree of dependence</p> <p>For the purpose of paragraph 248(f), the level of dependency of the child on the person there are grounds to detain shall also be considered when determining the best interests of the child.</p> | R248.1 |
| <p><b>Special considerations for minor children</b></p> <p>For the application of the principle affirmed in <u>section A60</u> that a minor child shall be detained only as a measure of last resort, the special considerations that apply in relation to the detention of minor children who are less than 18 years of age are</p> <ul style="list-style-type: none"> <li>• the availability of alternative arrangements with local childcare agencies or child protection services for the care and protection of the minor children;</li> <li>• the anticipated length of detention;</li> <li>• the risk of continued control by the human smugglers or traffickers who brought the children to Canada;</li> <li>• the type of detention facility envisaged and the conditions of detention;</li> <li>• the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and</li> <li>• the availability of services in the detention facility, including education, counselling and recreation.</li> </ul>  | R249   |
| <p><b>Applications for travel documents</b></p>  | R250   |



|   |        |
|---|--------|
| Inadmissibility on grounds of security — conditions | R250.1 |
|---|--------|

### 4.3. Forms and publications

Several forms require the gender identity of detainees to ensure their safety and well-being. Detention forms will progressively be updated to reflect all available gender identities as follows: male, female and another gender. Another gender is mainly being used for individuals with a passport or other travel document with the “X” designation. In addition, transgender, queer and two-spirit individuals may also select another gender.

All relevant detention forms and publications may be filled out and signed electronically (if available). They are shown in the following table:

| Form title  | Form number  |
|---|--|
| Order for Detention   | <a href="#">BSF304</a>   |
| Detention Cell Log and Instructions   | <a href="#">BSF481</a>   |
| Detention Notes   | <a href="#">BSF508</a>   |
| Minister's Opinion Regarding the Foreign National's Identity (under subsection 58(1)(d) of the <i>Immigration and Refugee Protection Act</i> )  | <a href="#">BSF510</a>   |
| Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules   | <a href="#">BSF524</a>   |
| Authority to Release from Detention   | <a href="#">BSF566</a>   |
| Detention (stickers)  | <a href="#">BSF578</a>   |
| Detainee Medical Needs  | <a href="#">BSF674</a>   |
| Request for Release from Mandatory Detention – Exceptional Circumstances (pursuant to <a href="#">paragraph 58.1(1)</a> of the <i>Immigration and Refugee Protection Act</i> )                              | <a href="#">BSF735</a>   |
| National Risk Assessment for Detention  | <a href="#">BSF754</a>   |
| Notice of Rights Conferred by the <i>Canadian Charter of Rights and Freedoms</i> and by the Vienna Convention Following Section 55 of the <i>Immigration and Refugee Protection Act</i> Arrest or Detention | <a href="#">BSF776</a>   |
| Information for people detained under the <i>Immigration and Refugee Protection Act</i> (brochure)  | BSF5012 <ul style="list-style-type: none"> <li>• <a href="#">English</a></li> <li>• <a href="#">French</a></li> <li>• <a href="#">Arabic</a></li> <li>• <a href="#">Chinese Simplified</a></li> <li>• <a href="#">Chinese Traditional</a></li> </ul> |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• <a href="#">Hindi</a></li> <li>• <a href="#">Japanese</a></li> <li>• <a href="#">Korean</a></li> <li>• <a href="#">Farsi</a></li> <li>• <a href="#">Portuguese</a></li> <li>• <a href="#">Punjabi</a></li> <li>• <a href="#">Russian</a></li> <li>• <a href="#">Spanish</a></li> <li>• <a href="#">Tagalog</a></li> <li>• <a href="#">Tamil</a></li> <li>• <a href="#">Urdu</a></li> </ul> |
| Acknowledgement of Conditions – Immigration and Refugee Protection Act (IRPA) | <a href="#">BSF821</a>  |

## 5. Instruments and delegations

IRPA provides officers with the discretionary authority or power to arrest and detain under section A55. Section A56 designates to officers the authority, prior to the first detention review, to release a person from detention if, in their opinion, the reasons for detention no longer exist.

Officers at ports of entry and enforcement officers working within inland offices may exercise this power. The CBSA Designation of Officers and Delegation of Authority document can be found in [IL 3](#).

## 6. Departmental policy

The Minister of Immigration, Refugees and Citizenship is responsible for the administration of IRPA with the exception of the areas for which the Minister of Public Safety has assumed responsibility as described below (subsection A4(2)).

The Minister of Public Safety is responsible for the administration of the Act as it relates to the following:

- examinations at ports of entry;
- the enforcement of IRPA, including arrest, detention and removal;
- the establishment of policies respecting the enforcement of IRPA and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- determinations under subsections A34(2), A35(2) and A37(2).

### 6.1. Principles

The CBSA is guided by the following principles governing the treatment of persons detained under IRPA:

- immigration detention is an administrative detention and must not be punitive in nature;
- persons detained under IRPA are treated with dignity and respect at all times;
- persons are detained in an environment that is safe and secure;
- persons are treated in a manner that is commensurate with the level of risk they pose to public safety or the integrity of the immigration program;
- persons are duly and appropriately considered for ATD throughout the detention continuum, which includes before every detention review;
- detention operations are conducted in a transparent manner, while respecting the privacy of the detained persons;
- a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child;
- people who are detained are informed of their legal rights, are given an opportunity to exercise their rights and are informed of the status of their case;
- feedback is welcomed by the CBSA and all detainees have access to a feedback process;
- for Immigration Holding Centres (IHC), the CBSA maintains national detention standards that incorporate international standards;
- monitoring of the CBSA's compliance with these standards will be conducted regularly by an external agency;
- in CBSA IHCs, the CBSA makes reasonable efforts to meet the physical, emotional and spiritual needs of detained persons in a way that is culturally appropriate.

## 6.2. General

The CBSA recognizes that to deny individuals their liberty is a decision that requires a sensitive and balanced assessment of risk. In exercising their discretionary authority to detain, officers must consider ATD, individual assessment of the case and the impact of release. Additionally, it requires a risk management approach that supports decision making within the context of the following priorities:

- where safety or security concerns are identified (including criminality, terrorism or violent behaviour);
- to support removal where removal is imminent and where a flight risk has been identified;
- where there are significant concerns regarding a person's identity including multiple identity documents, false documents, lack of travel documents or non-cooperation in assisting an officer to establish their identity.

## 6.3. Grounds for detention

Within Canadian territory and under the authority of subsection A55(1), an officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national,

- who the officer has reasonable grounds to believe is inadmissible and:
  - is a danger to the public; or (see section 6.4)
  - is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2). (see section 6.5)

Within Canadian territory and under the authority of subsection A55(2), an officer may, without a warrant, arrest and detain a foreign national, other than a protected person (the term protected person is defined in subsection A95(2)),

- who the officer has reasonable grounds to believe is inadmissible; and
  - is a danger to the public; or (see section 6.4)
  - is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or (see section 6.5)
- the officer is not satisfied as to the identity of the foreign national in the course of any procedure under IRPA. (see section 6.6)

On entry into Canada under the authority of subsection A55(3), an officer may detain a permanent resident or a foreign national where:

- the officer considers it necessary to do so in order for the examination to be completed; or (see section 6.7)
- the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality. (see section 6.8)

Under the authority of subsection A55(3.1), if a designation is made under subsection A20.1(1):

- the officer must detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation (see section 6.9); or
- the officer must arrest and detain without a warrant — or issue a warrant for the arrest and detention of — a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation. (see section 6.9)

Under section A81, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if:

- they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.

## 6.4. Factors: danger to the public

Where the officer assesses that an individual is inadmissible and there are reasonable grounds to believe the individual is a danger to the public, detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention (see [ENF 34, Alternatives to Detention](#)).

### Prescribed factors

Section R246 outlines the following factors that must be considered in assessing danger to the public:

- a. the fact that the person constitutes, in the opinion of the Minister of Immigration, Refugees and Citizenship, a danger to the public in Canada or a danger to the security of Canada under paragraph A101(2)(b), subparagraph A113(d)(i) or (ii) or paragraph A115(2)(a) or (b);
- b. association with a criminal organization within the meaning of subsection A121.1(1);
- c. engagement in people smuggling or trafficking in persons;
- d. conviction in Canada under an Act of Parliament for
  - i. a sexual offence, or
  - ii. an offence involving violence or weapons;
- e. conviction for an offence in Canada under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,
  - i. section 5 (trafficking),
  - ii. section 6 (importing and exporting), and
  - iii. section 7 (production);
- f. conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament for
  - i. a sexual offence, or
  - ii. an offence involving violence or weapons; and
- g. conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,
  - i. section 5 (trafficking)
  - ii. section 6 (importing and exporting), and
  - iii. section 7 (production).

## **Criminal convictions**

A criminal record does not necessarily mean that the individual is a threat. For example, a person who was convicted of a criminal offence and has not committed any further offences since that time might not be a danger to the public. Various factors must be weighed, such as the nature of the offences, the circumstances in which they were committed, the punishment imposed, the period of time elapsed since the offence, violent behaviour, the possibility of recidivism, and the possible consequences of releasing the person. Assessment reports by correctional services and by police may be a relevant source of information. It must be established why the presence of one or more of these factors demonstrates that the person is a danger to the public. Facts or the criminal profile should clearly outline why the individual is a danger to the public.

For information regarding persons serving a criminal sentence in a provincial or federal correctional facility, see [ENF 22, Persons serving a sentence](#).

## **Committing an offence in Canada**

Being charged with committing an offence in Canada (i.e. a pending charge without conviction in Canada) is not listed as an inadmissibility. Although this is an important fact, unless an officer relies on additional factors or detention grounds, an individual should not be detained for danger to the public solely because they have been charged with an offence in Canada. Indeed, the presumption of innocence is a principle where each individual is considered innocent unless proven guilty. In addition, prior to their release from criminal hold, individuals who have been charged with an offence in Canada must satisfy a judicial tribunal that they can be out on bail (e.g. based on the accused's criminal record, the seriousness of the

charges, protection of the public or the alleged victim, and the likelihood that the accused might commit further offences if released).

### **Other factors to consider**

The above factors outlined in IRPR provide a non-exhaustive list for the decision maker to consider. IRPA provides to officers and members of the Immigration Division the authority to consider all other circumstances pertaining to the case. The following are additional factors that may be relevant:

- history of violent or threatening behaviour demonstrated by the person;
- violent incidents or major breaches of a detention facility rules while in detention;
- statements, letters, photos or publication in social media of their intent to commit a violent crime;
- availability of ATD and whether sufficient to mitigate the danger to the public risk;
- suspected or known untreated addictions or mental illness linked to a violent behaviour; and
- pattern of criminal behaviour.

### **Mental health**

There may be reasonable grounds for thinking that an individual suffering from an untreated mental illness is a danger to the public (for example, unstable violent behaviour toward an officer during interaction). Instability of the person associated with mental imbalance at the time of the interview may be an important indicator in the assessment of the danger, and may point to future violent behaviour. Following the detainee's transfer to a detention facility, healthcare professionals will be able to provide assistance and to indicate what action should be taken in this type of case. If the mental illness is under control but requires medication upon release, consideration should be given to the accessibility of such medication to the detainee.

See section 6.14 for more detail on long-term detention and jurisprudence.

## **6.5. Factors: unlikely to appear (flight risk)**

Where the officer assesses that an individual is inadmissible and there are reasonable grounds to believe the individual is unlikely to appear for an examination, an admissibility hearing, removal or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2), detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention (see ENF 34, Alternatives to Detention).

### **Prescribed factors**

Section R245 outlines the factors to be taken into account when assessing flight risk:

- a. being a fugitive from justice in a foreign jurisdiction in relation to an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
- b. voluntary compliance with any previous departure order;
- c. voluntary compliance with any previously required appearance at an immigration or criminal proceeding;
- d. previous compliance with any conditions imposed in respect of entry, release or a stay of removal;

- e. any previous avoidance of examination or escape from custody, or any previous attempt to do so;
- f. involvement with a people-smuggling or trafficking-in-persons operation that would likely lead the person to not appear for a measure referred to in paragraph R244(a) or to be vulnerable to being influenced or coerced by an organization involved in such an operation to not appear for such a measure; and
- g. the existence of strong ties to a community in Canada.

### **Other factors to consider**

The above factors outlined in IRPR provide a non-exhaustive list for the decision maker to consider. The Act provides both officers and members of the Immigration Division with the authority to consider all other circumstances pertaining to the individual's case. The following are additional factors that may also be present and relevant:

- no fixed place of residence or attachment in Canada;
- removal is imminent;
- presence of relatives or friends in Canada who can exert influence over the individual, who are prepared to provide a guarantee or surety;
- the individual's cooperation with the authorities to obtain a travel document (for removal);
- availability of ATD and whether sufficient to mitigate the unlikely to appear risk; and
- suspected or known untreated mental illness causing disorientation or confusion.

The mere presence of any of the above factors should not automatically lead to detention. The factors must be considered in the context of all the circumstances in the case. For example, the person may be indigent; however, this does not constitute proof that the person will not appear. Much would depend on the officer's global assessment of the behaviour of the individual as demonstrated during the interview as well as all other circumstances of the case.

It is essential that officers are aware that the unlikelihood to appear may change as the various immigration processes unfold. For example, an individual claiming refugee protection may not be unlikely to appear at the time of the initial claim but may become unlikely to appear on the issuance of a negative determination by the Immigration and Refugee Board (IRB). Similarly a person appealing their removal order may not be unlikely to appear while that matter is being reviewed but may become unlikely to appear following a negative decision.

### **Delays in removal process**

Officers may encounter situations where a person is unlikely to appear for removal but the removal is not imminent or the date is unknown due to factors outside the control of the individual (e.g. stay of removal, lack of cooperation of a foreign government to deliver a travel document, lengthy appeal process). In these situations, unless officers rely on other detention grounds, officers should give additional weight to the use of ATD so as to avoid potentially lengthy detention while removal arrangements are being worked out.

However, if the removal has been delayed due to the individual's lack of cooperation (e.g. refusal to sign a travel document application or to attend an appointment with a foreign mission), then the detention may be maintained. A lack of cooperation on the part of the individual must be noted on the file. See section 6.14 for more detail on long-term detention and jurisprudence.

## 6.6. Factors: identity not established

Where the officer is not satisfied as to the identity of the foreign national, other than a protected person, in the course of any procedure under this Act, detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention (see [ENF 34, Alternatives to Detention](#)).

“Any procedure” refers to any process with regard to a person’s application or status, whether initiated by the person or by IRCC or the CBSA, that has arisen in the normal course of the immigration system. The procedures under IRPA include examinations, refugee claims, Ministerial determinations, admissibility hearings, etc. An investigation is not a procedure.

### Prescribed factors

Subsection R247(1) outlines the factors to be taken into account when assessing identity risk:

- a. the foreign national’s cooperation in providing evidence of their identity or assisting the officers in obtaining evidence of their identity, in providing the date and place of their birth and the names of their mother and father, in providing detailed information on the itinerary they followed in travelling to Canada or in completing an application for a travel document;
- b. in the case of a foreign national who makes a claim for refugee protection, the possibility of obtaining identity documents or information without divulging personal information to government officials of their country of nationality or, if there is no country of nationality, their country of former habitual residence;
- c. the destruction of identity or travel documents or the use of fraudulent documents in order to mislead officers, and the circumstances under which the foreign national took those actions;
- d. the provision of contradictory information with respect to identity at the time of an application to the CBSA or IRCC; and
- e. the existence of documents that contradict information provided by the foreign national with respect to their identity.

### Minor children

Subsection R247(2) directs that a minor child’s failure to cooperate in providing evidence of their identity or assisting must not have a negative impact on the assessment of the case (that is, non-cooperation in itself should not lead to a detention decision). Identification efforts must be actively pursued and expedited.

### Other factors to consider

The above factors outlined in IRPR provide a non-exhaustive list for the decision maker to consider. IRPA provides officers and members of the Immigration Division with the authority to consider all other circumstances pertaining to the individual’s case. The following are additional factors that may be present and relevant:

- whether the person is credible;
- whether differences in identities (names) provided resulted from language differences or interpretation difficulties;
- the result of a linguistics assessment;



- whether the person accepts to be interviewed by the embassy of the country of which the officer thinks the person is a citizen (does not apply to asylum seekers with a pending claim at the IRB);
- the officer's opinion that the identity of the foreign national may be established; and
- the officer's efforts to establish the identity of the foreign national.

Detention for identity may be considered where the officer is not satisfied as to the person's identity and identity issues need to be resolved for safety, security or inadmissibility concerns to be addressed to the satisfaction of the officer. This includes, but is not limited to, multiple identity documents, fraudulent documents, a lack of documents, a lack of credibility and non-cooperation to establish identity.

### **Cooperation to establish identity**

The officer must inform the detainee and their counsel that they can assist with the identification process by providing complete information and by personally attempting to obtain documentary evidence from their country of origin.

Officers may encounter situations where a person has cooperated with the CBSA by providing relevant information, but their identity has not been established due to factors outside their control (e.g. lack of cooperation of a foreign government in delivering a travel document, ongoing civil war in the country of origin). In these situations where officers have reached an impasse, unless officers rely on other detention grounds, officers should give additional weight to the use of ATD so as to avoid potentially lengthy detention while identification procedures continue.

However, if a person's identity has not been established due to their lack of cooperation (e.g. refusal to sign a travel document application or to attend an appointment for a linguistic assessment), then the detention may be justifiably maintained. A lack of cooperation on the part of the individual must be noted in the detention notes. See section 6.14 for more detail on long-term detention and jurisprudence.

### **Evidence of research into identity**

Given paragraph A58(1)(d), the Minister is required to demonstrate the possibility of establishing the identity of the person concerned within a reasonable period of time. Officers responsible for the identity investigation must follow each case closely and document any efforts made to establish the person's identity. Any actions undertaken or external delay shall be noted (e.g. phone calls to person's relatives). At the detention review, evidence must be provided to the Immigration Division that the Minister is taking the necessary steps to establish the identity of the person. Some situations will require inquiries with national (e.g. National Document Centre, liaison officers, IRCC, the Royal Canadian Mounted Police [RCMP]) and international enforcement agencies (e.g. foreign governments), which may take time. Officers must demonstrate they have worked diligently to obtain the missing evidence (e.g. fingerprint results).

## **6.7. Factors: detention on entry to complete the examination**

The power of officers to detain "on entry into Canada" in order for the examination to be completed (paragraph A55(3)(a)) may only be exercised at a port of entry. The detaining officer has to justify their attempts to complete the examination and state when the examination is expected to resume and to be completed. The detaining officer has the responsibility to resume the examination upon the detainee's return to the port of entry, unless other arrangements have been made with another port or entry or inland

enforcement office. Officers should attempt to complete the examination of an individual, and if an officer is unavailable, the case should be assigned to another available officer to fully assess and complete the examination. Officers can detain a foreign national in order for the examination to be completed if their other options for dealing with incomplete examinations (e.g. direct back [section R41], entry to complete examination [section A23], deposit [section R45]) are not available or cannot mitigate the risk. For more information on options for dealing with inadmissibility and incomplete examinations, see ENF 4, Port of Entry Examinations.

Here are some situations where detention to complete the examination may be justified for foreign nationals seeking temporary resident status:

- An inadmissible foreign national wishes to withdraw his application at a port of entry (airport) late in the evening. The foreign national is unable to leave the port of entry because the last returning flight has already left and no other returning flight is available for the next two days. The officer believes that if the foreign national remains in Canada, he will pose a danger to the public. The officer has considered other options for dealing with incomplete examinations and ATD; however, none of them can mitigate the risk or is available at that time of day. The officer decides to detain the foreign national until the next return flight is available. Later, the foreign national is brought back to the port of entry and released before the first detention review. The return flight is now available, and the officer completes the examination by allowing the foreign national to withdraw his application.
- A foreign national requests admission at a port of entry (airport) late in the evening. The officer has reasonable grounds to suspect that her Canadian visa may have been improperly obtained, and an interview is necessary to confirm her doubts. Despite multiple attempts, the officer is unable to obtain the services of an interpreter to communicate with the traveller, and local airport policies prohibit travellers from staying overnight at that airport. The officer believes that if the foreign national remains in Canada, she is unlikely appear for the examination. The officer has considered other options for dealing with incomplete examinations and ATD; however, none of them can mitigate the risk or is available at that time of day. The officer decides to detain the foreign national until the next day. The next morning, the foreign national is brought back to the port of entry and released before the first detention review. The officer has reached an interpreter and the examination resumes. Following the interview, the officer is satisfied that the Canadian visa was properly delivered and the foreign national is authorized to enter Canada.

## **Permanent residents**

Officers must remain cognizant of the fact that subsection A19(2) gives permanent residents of Canada the right to enter Canada at a port of entry once it is established that a person is a permanent resident, regardless of non-compliance with the residency obligation in section A28 or the presence of another inadmissibility. While permanent residents seeking entry into Canada may be detained, officers at ports of entry should not detain a permanent resident solely in order for the examination to be completed. See section 6.8 below, which outlines procedures for when a permanent resident is suspected to be inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality.

## **Urgent medical treatment**

When a person requires urgent medical treatment, the transport of the person by ambulance to a hospital should not be delayed because of an administrative process. At ports of entry, officers should not detain a

person requiring urgent medical treatment in order for the examination to be completed, unless their other options for dealing with incomplete examinations cannot mitigate the risk. For example, an entry to complete examination under section A23, the seizure of the travel documents and the name of the hospital may be sufficient to handle most cases. Therefore, there is no need to escort the client to the hospital as the person is not detained. Once the person has recovered from their urgent health condition, they will be able to return to the CBSA office to resume the examination. For more information on incomplete examinations, see [ENF 4, Port of Entry Examinations](#).

Moreover, officers must not detain a person for the sole purpose of issuing them Interim Federal Health Program (IFHP) coverage to cover the healthcare expenses. Healthcare expenses of people who are not eligible for the IFHP must be assumed by the person concerned and/or their public or private health insurance. For more information on the IFHP, see [IR 10, Interim Federal Health Program](#).

## **6.8. Factors: detention on entry for suspected inadmissibility on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality**

The power of officers to detain “on entry into Canada” may only be exercised at a port of entry where the officer has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality (paragraph A55(3)(b)), and it should never be used solely for administrative convenience.

The standard of proof set under paragraph A55(3)(b), reasonable grounds to suspect, is lower than reasonable grounds to believe, which allows officers to arrest and detain with or without warrant under sections A55(1) and A55(2). If enough evidence is gathered to confirm the inadmissibility, the grounds for detention and the detention notes should be updated.

### **Evidence of research into inadmissibility**

The purpose is to enable officers to obtain further relevant documents, information or other evidence to determine individual admissibility. The officer shall pursue their research to establish whether the person is inadmissible during the period of detention. Any actions undertaken, external delay and awaiting results must be noted. At the detention review, evidence must be provided to the Immigration Division that the Minister is taking the necessary steps to inquire into the reasonable suspicion that the permanent resident or foreign national is inadmissible on grounds listed above. Some situations will require inquiries with national (e.g. National Security Screening Division, liaison officers, IRCC, the RCMP or Canadian Security Intelligence Service [CSIS]) and international enforcement agencies (e.g. Interpol), which may take time. Officers must demonstrate they have worked diligently to obtain the missing evidence (e.g. criminal convictions, intelligence information or lookouts). For more information regarding the evidence required to find a person inadmissible as described in these sections, see [ENF 1, Inadmissibility](#).

### **Originating office**

If an officer has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality, the officer should write it in their detention notes regardless of whether the

detention began at a port of entry or in Canada, as they may be used for the detention review. Indeed, an individual who has initially been detained on specific grounds such as danger to the public, unlikely to appear, or identity not established, can subsequently have their detention continued on the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality (A58(1)(c)).

## **6.9. Factors: mandatory arrest and detention of designated foreign national**

Under paragraph A55(3.1)(a) or (b), if a designation is made by the Minister under subsection A20.1(1), an officer must detain, arrest or issue a warrant for the arrest and detention of a designated foreign national (DFN) who is or was 16 years of age or older on the day of the arrival that is the subject of the designation.

Subsection A20.1(1) stipulates that the Minister may, by order, having regard to the public interest, designate as an irregular arrival the arrival in Canada of a group of persons if he or she:

1. is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility – and any investigations concerning persons in the group – cannot be conducted in a timely manner, or
2. has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection A117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.

When a designation is made, a foreign national who is part of the group whose arrival is the subject of the designation becomes a DFN. DFNs are subject to mandatory arrest and detention and a revised detention review timeline of within 14 days and then every six months thereafter. The CBSA must arrest and detain all DFNs who were 16 years of age or older at the time of the arrival, where the designated irregular arrival occurred on or after June 28, 2012.

Mandatory detention does not apply to DFNs who are 15 years of age or younger on the day of arrival.

For more information, consult the [Designated Irregular Arrivals Standard Operating Procedures](#).

## **6.10. Other regulatory factors and best interests of the directly affected child**

### **Prescribed factors**

Section R248 outlines the factors the officer or the Immigration Division shall consider before making a decision on detention or release:

- a. the reason for detention;
- b. the length of time in detention;
- c. whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;

- d. any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned;
- e. the existence of alternatives to detention; and
- f. the best interests of a directly affected child who is under 18 years of age (for more information, see the section below).

Various ATDs are available, and officers must consider them prior to detention and while the individual remains in detention. Officers should consider the individual's immigration history and potential risk against the maximum risk that can be mitigated through each ATD. Of note remains the fact that accessibility to ATDs may differ between ports of entry and inland enforcement offices. The availability of ATDs may be impacted by the time or day of the arrest as some of them require involvement from third parties (e.g. guarantor and service provider). For more information on the ATD Program, see [ENF 34, Alternatives to Detention](#).

Should an ATD have been considered appropriate but not have been accessible or available at the time of the detention (e.g. a potential guarantor was identified but they could not appear at the office, a bed in a mandatory residency facility is not available), it should be included in the detention notes because hearings officers may make an application for an early detention review if continued detention is no longer justified.

### **Best interests of a directly affected child**

Subsection R248(f) requires that the best interests of a directly affected child who is under 18 years of age shall be considered before a decision is made on detention or release. There is no limitation regarding the directly affected child's location (i.e. in Canada or abroad) or whether the minor is detained, housed or released. However, subsection R248.1(2) stipulates that the level of dependence of the child on the person there are grounds to detain shall be considered when determining the best interests of the child. To assess the best interests of a directly affected child or the best interests of the child when the child is detained, subsection R248.1(1) provides a non-exhaustive list of factors that officers and Immigration Division members must consider:

- a. the child's physical, emotional and psychological well-being;
- b. the child's healthcare and educational needs;
- c. the importance of maintaining relationships and the stability of the family environment, and the possible effect on the child of disrupting those relationships or that stability;
- d. the care, protection and safety needs of the child; and
- e. the child's views and preferences, provided the child is capable of forming their own views or expressing their preferences, taking into consideration the child's age and maturity.

## **6.11. Detention of minor children (under 18 years of age)**

A minor child may be detained if grounds for detention exist under section A55. It is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account other applicable criteria including the best interests of the child (BIOC) (section A60). However, additional precautions exist and more factors have to be taken into consideration. For appearances before the IRB, subsection A167(2) provides that a representative shall be designated for any person who is under 18 years of age or who, in the opinion of the Division, is unable to understand the nature of the proceedings.

For more information on detention review, see [ENF 3, Admissibility, Hearings and Detention Review Proceedings](#).

### **Prescribed factors**

Section R249 identifies the special considerations that apply in relation to the detention of minor children under 18 years of age. These considerations are described as follows:

- a. the availability of alternative arrangements with local childcare agencies or child protection services for the care and protection of the minor children;
- b. the anticipated length of detention;
- c. the risk of continued control by the human smugglers or traffickers who brought the children to Canada;
- d. the type of detention facility envisaged and the conditions of detention;
- e. the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and
- f. the availability of services in the detention facility, including education, counselling and recreation.

For complete information on the detention of a minor, see Annex B, [National Directive for the Detention or Housing of Minors](#).

## **6.12. Housing of minor children (under 18 years of age)**

A housed minor is a foreign national, permanent resident or Canadian citizen who, after the completion of a BIOC assessment, is kept with their detained parent(s) or legal guardian(s) at an IHC at the latter's request.

A housed minor is not subject to an Order for Detention and is free to remain in and re-enter the IHC subject to consent of the parent(s) or legal guardian(s) in accordance with the rules and procedures of that facility. No detention-related forms should be issued for a housed minor as they are not detained. This includes the Detainee Medical Needs, as these forms are only issued where the IRPA grounds for detention of the minor are met. However, tracking of housed minors in the National Case Management System (NCMS) is required. See section 9.1, Data entry, for more details.

For complete information on the housing of a minor, see Annex B, [National Directive for the Detention or Housing of Minors](#).

## **6.13. Vulnerable persons**

A vulnerable person in the detention context is defined as a person for whom detention may cause a particular hardship. Vulnerable persons must clearly be identified on the National Risk Assessment for Detention (NRAD) form (see section 9.5). For persons falling into one or more of these categories, officers should apply the principle that where there is no danger to the public, detention is to be avoided. Detention of a vulnerable person is not precluded where the individual is considered a danger to the public. However, it should be for the shortest period of time and should be focused on supporting imminent removal. Vulnerable persons are:

- pregnant women and nursing mothers;
- minors (under 18 years of age) (see section 6.11, Detention of minor children);
- persons suffering from a severe medical condition or disability (see note 1 below);
- persons suffering from restricted mobility (see note 1 below);
- persons with a suspected or known mental illness (includes suicidal and self-harmful persons);  
and
- victims of human trafficking (see note 2 below).

Note 1: To assess if a person's medical condition, disability or restricted mobility is severe enough to cause a particular hardship, the officer must take into account the detention facility and available services. The officer must believe that the person cannot be properly managed within the detention facility in comparison with another detainee without the vulnerability (for instance, a person requires a walker but the detention facility does not offer this kind of service). When in doubt that a person can be satisfactorily managed within a detention facility, officers should make a decision in consultation with an officer who works at an IHC, a detention liaison officer (DLO) or a designated regional representative.

Note 2: Victims or suspected victims of human trafficking should never be kept or be in contact with their trafficker, if known.

## 6.14. Long-term detention and jurisprudence

The CBSA considers all detentions that have lasted over 99 days to be long-term detentions. As is done for each detention, officers should actively determine if ATDs could be available or suitable to mitigate the risk. In cases of long-term detention, officers should carefully document each effort or progress that has been made to reach an immigration purpose (e.g. to establish the identity or to remove an individual). A detention must come to an end if it no longer serves an immigration purpose. Pursuant to paragraph A58(1)(d), the Minister's representative is required to demonstrate the possibility of establishing the identity of the person concerned within a reasonable period of time to justify continued detention on such grounds. Officers responsible for the identity investigation must follow each case closely and document any efforts made to establish the person's identity. This will demonstrate that the CBSA is making progress and that the individual's detention is not indefinite. Long-term detentions are more justifiable where one of the following situations occurs:

- the detained individual is a danger to the public;
- ATDs and conditions cannot sufficiently mitigate the danger to the public or the unlikelihood to appear; or
- delays can be attributed primarily to the detainee, as a result of their refusal to cooperate with the CBSA in achieving the applicable enforcement outcome.

### Jurisprudence

In Sahin v. Canada (Minister of Citizenship and Immigration), [1995] 1 FC 214, the Federal Court ruled that persons cannot be held indefinitely under the provisions of the *Immigration Act*. There has to be an end to the process in view. This ruling has been quoted several times in several judgements, even though it refers to the former *Immigration Act*. In this case, the reason for detention was that, in the opinion of the adjudicator, the subject would not report for removal if required to do so. The Court's decision in this case set out a four-part test regarding detention. These four factors have been integrated into section R248.

- The first is that there is a stronger case for justifying a longer detention for someone considered a danger to the public.
- The second concerns the length of future detention: if it cannot be ascertained, the facts would favour release.
- The third is a question of who is responsible for any delay: unexplained delay or even unexplained lack of diligence should count against the offending party.
- The fourth is the availability, effectiveness and appropriateness of ATDs such as outright release, bail bond and periodic reporting.

In Lunyamila v. Canada (Public Safety and Emergency Preparedness), 2016 FC 1199, the Federal Court ruled that persons who are a danger to the public or a flight risk and who are not cooperating with the Minister's efforts to remove them from Canada must continue to be detained until such time as they cooperate with their removal, except in exceptional circumstances. However, release might be justified in an exceptional circumstance, such as when there have been unexplained and very substantial delays by the Minister that are not attributable to the detained person's lack of cooperation or to an unwillingness on the part of the Minister to incur substantial costs that would be associated with pursuing non-speculative possibilities for removal. Where a person is a danger to the public, the greater the risk that the public would be required to assume under a particular alternative to detention, the more this factor should weigh in favour of continued detention.

In Canada (Public Safety and Emergency Preparedness) v. Ismail, [2015] 3 FCR 53, 2014 FC 390, the Federal Court determined that there is nothing in subsection A58(1) that ties the ability of the Immigration Division to continue to detain an individual under that provision to the original grounds of detention under section A55. It is thus apparent on the face of the legislation that an individual may originally be detained by an officer for one reason, on the basis of one standard, but may later be denied release by the Immigration Division on a different ground, and on the basis of a different standard.

## 7. Detention facilities

In the administration of the immigration detention program, the CBSA uses multiple detention facilities to detain individuals under the IRPA. The placement in and transfer of detainees to a detention facility are guided by their NRAD score, factors of their case and location. Under section A142, CBSA officers may direct certain individuals to detain a permanent resident or a foreign national on behalf of the CBSA. Moreover, section A143 provides that these individuals have the authority to detain a person with respect to whom an order to detain is made on behalf of the CBSA [BSF304]. These provisions read as follows:

A142 Every peace officer and every person in immediate charge or control of an immigrant station shall, when so directed by an officer, execute any warrant or written order issued under this Act for the arrest, detention or removal from Canada of any permanent resident or foreign national.

A143 A warrant issued or an order to detain made under this Act is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive and execute it to arrest and detain the person with respect to whom the warrant or order was issued or made.



## Immigration holding centres

The IHC should always be the default detention facility if risk can be mitigated, in regions where those facilities are available. Individuals detained under the IRPA who have scored 0 to 4 points and 5 to 9 points (if risk can be mitigated in an IHC) on the NRAD form [BSF754] should be held in an IHC. The CBSA operates four regional IHCs:

- The Laval IHC has a maximum capacity of 144 detainees. It is located at 200 Montée St-François, Laval, QC H7C 1S5. Laval IHC serves the following regions: Quebec, Atlantic and Northern Ontario (Cornwall and Ottawa exclusively).
- The Toronto IHC has a maximum capacity of 195 detainees. It is located at 385 Rexdale Blvd, Toronto, ON M9W 1R9, near the Pearson International Airport. Toronto IHC serves the following regions: Greater Toronto Area, Southern Ontario and Northern Ontario (except Cornwall and Ottawa).
- The Vancouver IHC has a maximum capacity of 24 detainees. It is located at #113, 5000 Miller Road, Richmond, BC V7B 1K6, inside the Vancouver International Airport. This facility is only for short stays of up to 48 hours, and it serves the Pacific Region. It will be replaced by the Surrey IHC.
- The Surrey IHC is being constructed, and it will have a maximum capacity of 73 detainees. It will be located at 13130 76th Avenue, Surrey, BC V3W 2V6. Surrey IHC will serve the following regions: Pacific and Prairies.

## Provincial correctional facilities

Provincial correctional facilities are used in regions where placement in an IHC is not available. This includes individuals detained over 48 hours in the Pacific Region until the construction of the Surrey IHC has been completed.

In addition, individuals detained under IRPA who have a total score of 5 to 9 points (if risk cannot be mitigated in an IHC) and 10 points and more on the NRAD form [BSF754] should be held in a provincial correctional facility.

The CBSA has several arrangements and bilateral agreements with provincial governments to allow the use of provincial correctional facilities by CBSA detainees. Currently, the CBSA has bilateral agreements with the following provinces for the purpose of immigration detention: Alberta (2006), Ontario (2015), Quebec (2017) and British Columbia (2017).

## Police stations

In some regions, detainees are detained at police stations or local RCMP detachments for a few days or less until being transferred to a provincial correctional facility or to CBSA custody. This is more common in isolated communities where no IHC or provincial correctional facility is in near proximity.

## 8. Detention program monitoring

The CBSA conducts internal reviews of its detention program. These reviews help ensure operational alignment with CBSA's national detention standards, adherence to national detention policies and directives, as well as consistency in officers' decisions, enabling effective management of the program and continual process improvement. In addition, the CBSA's detention program is monitored by other organizations. Their regular independent and unbiased reviews have been key in ensuring that reviews and recommendations are transparent, impartial and in the best interest of immigration detainees.

### 8.1. Canadian Red Cross

Since 1999, through arrangements with the federal government, the Canadian Red Cross (CRC) has been independently monitoring the CBSA's immigration detention program to ensure that persons detained pursuant to the IRPA are held and treated in accordance with applicable domestic standards and in compliance with international instruments to which Canada is a signatory. During this time, the CRC has conducted site visits to IHCs, provincial correctional facilities and other detention facilities across Canada and has provided important feedback and expert advice on policies and programs to the CBSA through their annual reports, detainee visits, communication and regular meetings.

In 2017, a contract was awarded to the CRC for the monitoring of Canada's immigration detention program to ensure that the CBSA's immigration detention program meets both national and international immigration detention standards. Under the contract, the CRC conducts ongoing site visits throughout the year, reports on its findings and provides recommendations to detention authorities to help improve the overall immigration environment for detainees. To this end, the CBSA collaborates with the CRC, and both parties have agreed to the following:

- The CBSA will provide the CRC unfettered access to all persons being held in detention facilities under the control and management of the CBSA. As required, the CBSA will escort the CRC and its resources into IHC facilities and areas where they will meet with immigration detainees to conduct their confidential meetings.
- In cases where the CRC is denied access to non-CBSA facilities, the CBSA region or Headquarters will endeavour, to the fullest extent possible and subject to any lawful limitations, to facilitate access to immigration detainees being held in detention facilities under the control and management of other federal, provincial, territorial or municipal authorities.
- Following the initial detention review by the IRB and after 48 hours, in accordance with the legislative and/or procedural protocols established by the CBSA, the CBSA will notify the CRC's established point(s) of contact of unaccompanied minors under the age of 18 being detained or housed in detention and/or persons who are unable to appreciate the nature of proceedings before the IRB.
- The CBSA will provide limited information regarding a detainee's case history (e.g. country of origin, gender, ethnicity, language of origin) as required by the CRC to effectively conduct monitoring visits with detainees and as relevant to assess detention operations. These data will not identify any individuals and are not considered personal information.
- The CBSA will notify the CRC when an emerging issue or incident occurs (e.g. hunger strike, allegation of abuse, death incident) so that the CRC may conduct a monitoring visit to ensure the well-being of other detainees and the health of the detention environment.

## **CBSA notification requests**

- Unaccompanied minors: At first contact with an unaccompanied minor, CBSA regional management will notify the CRC in writing as soon as possible by sending an email message to [IDMP@REDCROSS.CA](mailto:IDMP@REDCROSS.CA). In the subject line, CBSA regional management is to indicate: "CBSA Notification Request: Unaccompanied Minors" and the facility or location where the minor is being held.
- Persons unable to appreciate IRB proceedings: CBSA regional management will follow the same communication protocol and send an email to the CRC generic email box with the following in the subject line: "CBSA Notification Request: Persons Unable to Appreciate IRB Proceedings".
- Emerging issues: Following the same communication protocol, CBSA regional management will also notify the CRC when an emerging issue or incident occurs such as a hunger strike, a protest, allegations of abuse, or lockdown.
- Death in custody: Following a death in custody, the CRC is not expected to intervene while the provincial authority undertakes its investigation. However, CBSA regional management will notify the CRC of the death in custody in order for the CRC to conduct a monitoring visit of immigration detainees held in the detention facility to ensure their continued well-being and a healthy detention environment following this incident.

## **8.2. United Nations High Commissioner for Refugees (UNHCR)**

All CBSA facilities are subject to independent monitoring of detention standards by the UNHCR. Canada is a signatory to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Under article 35 of the Convention, Canada is required to cooperate with the UNHCR in the exercise of its functions and will, in particular, facilitate its duty of supervising the application of the provisions of this Convention. In order to enable the UNHCR to finalize performance management reports, Canada is required to provide the UNHCR thorough information and statistical data requested concerning the following:

- the condition of refugees;
- progress in implementing this Convention; and
- laws, regulations and decrees that are, or may be in the future, in force relating to refugees.

Refugee claimants should be able to contact and be contacted by the local UNHCR office.

## **9. Procedure: detention**

### **Arrest**

Under subsections A55(1) and (2), an officer may arrest and detain a person. For complete information on the procedures for arrest under the IRPA, see ENF 7, Investigations and Arrests, section 15.

Under subsection A55(3), an officer may detain a person on entry to Canada. This difference is due to the fact that the person is already within the CBSA's control and thus arrest is not necessary.

## Detention

The following table contains the main tasks that must be completed to detain an individual under the IRPA.

| Task   | Responsibility and References   | Uploaded to GCMS | Paper copies |                                       |                    |     |
|--|---|------------------|--------------|---------------------------------------|--------------------|-----|
|  |   |                  | Case file    | Detainee or designated representative | Detention Facility | IRB |
| Ensure that the Notice of Rights Conferred by the Canadian Charter of Rights and Freedoms and by the Vienna Convention Following Section 55 Immigration and Refugee Protection Act Arrest or Detention [BSF776] has been completed.  | Officer<br><br>See <a href="#">ENF 7, Investigation and Arrests</a>   | X                | X            | X                                     |                    |     |
| Use an accredited interpreter where a detainee does not understand one of Canada's official languages to ensure procedural fairness and fill out the Interpreter Declaration form [IMM1265B].  | Officer<br><br>See <a href="#">Using the services of an accredited interpreter</a>  |                  | X            |                                       |                    |     |
| Search the detainee for officer safety.  | Officer<br><br>See <a href="#">ENF 12, Search, Seizure, Fingerprinting and Photographing</a>                                |                  |              |                                       |                    |     |
| Photograph and fingerprint the detainee, if not already done during the arrest process.  | Officer<br><br>See <a href="#">ENF 12, Search, Seizure, Fingerprinting and Photographing</a>                                |                  | X            |                                       |                    |     |
| Query the National Crime Information Center (NCIC), authorized usage: officer/public safety concerns. Query the Canadian Police Information Centre (CPIC).   | Officer   |                  | X            |                                       |                    |     |
| Give the detainee the brochure "Information for people detained under the Immigration and Refugee Protection Act" [BSF5012] and any other regional detention facility information.   | Officer<br><br>See section 4.3 to select one of the 16 languages available  |                  |              | X                                     |                    |     |
| Conduct a visual check or video monitoring of detainees while in short-term detention rooms or cells at least once every 15 minutes. Fill out Detention Cell Log and Instructions form [BSF481].<br><br>If a detainee is believed to be suicidal or self-harmful, constant visual or video monitoring is required. | Officer or contracted security guards<br><br>See section 10, Care of detainees while in short-term detention rooms or cells | X                | X            |                                       |                    |     |
| Fill out the Detention Notes form [BSF508] and explain the case history, the applicable detention and release factors and the pursued enforcement objective. Explain how the best interests of a directly affected child and ATDs have been considered and if they would be deemed appropriate at a later time.    | Officer<br><br>See section 9.2, Detention notes   | X                | X            | X                                     |                    | X   |
| Only for detentions where the identity of a foreign national has not been established, fill out the Minister's Opinion Regarding the Foreign National's Identity (under paragraph 58(1)(d) of the Immigration and Refugee Protection Act) form [BSF510].   | Minister's delegate (superintendent, manager, hearings officer)   | X                | X            |                                       |                    | X   |
| Data entry in GCMS and NCMS or make arrangements with the closest inland enforcement office for the earliest possible data entry in NCMS.  | Officer<br><br>See section 9.1, Data entry  |                  |              |                                       |                    |     |

If the detention continues and the detainee will be placed in or transferred to a detention facility, all paper copies given to the detainee must not have any staples or paper clips to ensure that they can be brought in the detention facility. In addition, the following tasks must be completed:

| Task  | Responsibility and References   | Uploaded to GCMS | Paper copies |                                       |                    |     |
|---|---|------------------|--------------|---------------------------------------|--------------------|-----|
|   |   |                  | Case file    | Detainee or designated representative | Detention Facility | IRB |
| Fill out the Detainee Medical Needs form [BSF674].  | Officer<br><br>See section 9.4, Detainee medical needs                            | X                | X            | X                                     | X                  |     |
| Fill out the National Risk Assessment for Detention form [BSF754].  | Officer<br><br>See section 9.5, Placement: national risk assessment for detention | X                | X            | X                                     | X                  |     |
| Management review (part 1) of the legal authority and detention placement. The name of the reviewing manager must be added to the NRAD form by the officer.   | Management<br><br>See section 9.6 Management review of detention cases            |                  |              |                                       |                    |     |
| Fill out the Order for Detention form [BSF304].   | Officer<br><br>See section 9.3, Order for Detention                               | X                | X            |                                       | X                  |     |
| If the detainee will be transported by contracted security guards, notify the contracted security guards of all transport request as soon as practicable to minimize any delay.   | Officer<br><br>See section 11.6, Transport  |                  |              |                                       |                    |     |
| Provide in writing to the detainee the name, address and telephone number of the detention facility with any other regional detention facility information. If the detainee will be detained in a provincial correctional facility, give the DLO's or designated officer's contact information as well. | Officer   |                  |              | X                                     |                    |     |
| Fill out the Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules form [BSF524], notify the IRB – Immigration Division and save in GCMS evidence (e.g. copy of the facsimile receipt) that the IRB – Immigration Division has been informed.                   | Officer   | X                | X            |                                       |                    | X   |
| Management review (part 2) – quality review of detention cases.   | Management<br><br>See section 9.6, Management review of detention cases           |                  |              |                                       |                    |     |
| Notify the Canadian Red Cross by sending an email to <a href="mailto:IDMP@REDCROSS.CA">IDMP@REDCROSS.CA</a> and keep the email for each case involving unaccompanied minors, persons unable to appreciate IRB proceedings, emerging issues and death in custody.  | CBSA regional management<br><br>See section 8.1, Canadian Red Cross               |                  | X            |                                       |                    |     |

## 9.1. Data entry

Detention tracking information is very time sensitive and must be entered into the Global Case Management System (GCMS) and the National Case Management System (NCMS) databases as soon

as possible. Both systems are used to track detainee cases and to produce statistics for detention program management and for the public.

## GCMS

Most detention forms, such as an Order for Detention, are available in GCMS, which allows officers to fill them out electronically. To ensure consistency and the ability to track cases, all GCMS-generated detention forms must be saved in the associated activity (for example, examination, arrest).

Some detention forms, such as the National Risk Assessment for Detention and Detainee Medical Needs forms, are currently available only as a fillable PDF, which allows officers to fill them out electronically. To ensure consistency and the ability to track cases, all filled-out detention forms that are not available in GCMS must be saved in GCMS, under the detainee's unique client identifier (UCI). Multiple forms may be simultaneously scanned and uploaded in the same attachment, as long as they are clearly identified:

- Navigate to "Clients" > "Documents" > "ID Supporting Documents" sub tab.
- Create a new record.
- Select the following options:
  - Type: CDN Immigration Doc
  - Sub Type: Client Submission
  - Document #: Form(s) BSF#
  - Country of Issue: Canada
  - Document Name: Name(s) of the form(s)
- Complete the "Issue Date".
- Add a new attachment in PDF format.

See the GCMS Wiki reference materials, [Arrest & Detain](#) and [Detained for Examination or MD Review](#) for more details. It is essential that the request for detention review and the detention summary screens in GCMS be completed as soon as possible by either the officer or the minister's delegate. If the detainee's detention facility or detention grounds change, it must be updated in GCMS.

## NCMS

NCMS must be used for tracking all detentions originating at ports of entry and inland offices. All immigration holds must be saved in NCMS for detentions that last more than 15 minutes or when a short-term detention room or cell is used.

- If the detainee is later released prior to placement in or transfer to a detention facility, officers must select the NCMS option "Arrest and Release";
- If the detainee is placed in or transferred to a detention facility, officers must select the NCMS option "Arrest and Detained".

In addition, if a detainee is being transferred to a detention facility, an NRAD event must be completed under the "Immigration Hold" tab in NCMS. Officers must create a new NRAD event, enter the total score in the disposition section and select a vulnerable category (if applicable). If a person is detained less than a 15 minutes and no short-term detention rooms or cells were used before release, an immigration hold in NCMS is not necessary (e.g. an officer detains and releases a person after realizing it was not the right

person; an officer executes an arrest warrant and the person is immediately released). For procedures on entering detention data into NCMS, please see the [NCMS User Guide](#).

Most detention cases are forwarded to an inland enforcement office, which will create an immigration hold in NCMS. However, if a detention originates at a port of entry that does not have access to NCMS and the case will not be forwarded to an inland enforcement office (e.g. a person is detained and released at a port of entry before the first detention review), then an email request to create an immigration hold must be sent to the nearest inland enforcement office for the earliest possible data entry to NCMS.

For NCMS tracking of a minor on Alternative Arrangement, Housing or Detention, please see the [Standard Operating Procedures](#).

## 9.2. Detention notes

It is the officer's responsibility to clearly identify the initial factors that led to the decision to detain a person. An officer must be satisfied that given all the available information, the facts warrant the detention of an individual. Grounds and factors for detention, actions undertaken, information to be received and the facts justifying the officer's decision must be supported in the detention notes [BSF508] and uploaded in GCMS. When documenting their decision, officers should take the following steps:

- make a brief case history including actions taken to provide context for the reasoning;
- record the detention grounds (section 6.3);
- make a list of the applicable detention and release factors (sections 6.4 to 6.8);
- record the enforcement objective (e.g. to ensure the detainee appears at the immigration hearing or the removal from Canada, to establish the identity, to complete the examination or to establish the suspected inadmissibility);
- consider the best interests of a directly affected child or the best interests of the child (sections 6.10 and 6.11 and Annex B)
- show that ATDs have been considered and weighed against the detainee's identified risk. Officers must clearly document which ATDs have been considered and how they will not mitigate the associated risk (section 6.10 and [ENF 34, Alternatives to Detention](#)).

A detailed decision will help those involved, specifically community liaison officers, hearings officers and IRB members, to understand the reasoning that led to the decision to detain a person as well as the factors that contributed to maintaining the decision for an extended duration. A rigorous approach to the detention notes will support the action taken and the evolution of the file throughout the process (from the initial examination to the most recent detention review before the Immigration Division). In addition, appropriate and complete detention notes are critical to judicial reviews at the Federal Court, provincial courts and the IRB and any future file reviews.

When preparing the detention notes, the officer must show that their decision is supported by a rigorous assessment of the facts, including factors prescribed by IRPR. Although these prescribed factors must be considered during the officer's initial assessment of the situation, they are not restrictive; it is an analysis of the file in its entirety that will determine whether detention is necessary. If release on an ATD is deemed appropriate but it is not possible to effect release within a reasonable period of time (e.g. depositor not available, time needed to raise cash for deposit, release plan to be put into place), placement in a detention facility may be warranted until release can be effected. In such cases, the

proposed ATD should be clearly documented and release effected as soon as possible. Refer to ENF 34, Alternatives to Detention for further information.

### 9.3. Order for Detention

The Order for Detention form [BSF304] is used when an individual is detained under section A55 and needs to be placed in or transferred to a detention facility (i.e. IHCs, provincial correctional facilities and police stations). Officers must fill out the form, and the receiving detention facility staff must be given a copy. At the time of the transport, the detainee must receive in writing: the name, address and telephone number of the detention facility. If the detainee is detained in a provincial correctional facility, the DLO's or designated officer's contact information must be given. The form is not required if the detainee is released before any placement in or transfer to a detention facility has occurred.

### 9.4. Detainee medical needs

The intent of the Detainee Medical Needs (DMN) form [BSF674] is to ensure national consistency in gathering and sharing information regarding detainee medical needs with detention staff. The officer making the detention decision must complete the DMN form to ensure the safety and well-being of the detainee. This form is not required if the detainee is released before any placement in or transfer to a detention facility has occurred. An information session on the DMN form is available to officers in the following training and learning section: [http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index\\_eng.asp](http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index_eng.asp).

Information in the health condition section is based on information stated by the detainee, and its accuracy cannot be validated before a consultation with a healthcare professional. The form is not a medical diagnosis, but a tool for detention staff to note any information pertaining to the detainee's self-identified needs before the detainee has their initial consultation with a healthcare professional. The form contains information on the detainee's health needs (such as mobility impairment) and life-threatening health conditions (such as heart disease, diabetes or allergies). In addition, the DMN form [BSF674] contains emergency contact information. If the detainee provided contacts in this section, the CBSA will contact the individuals listed in the event of a life-threatening health condition or the death of the detainee in CBSA custody or control during the detention period. If required, the detainee's personal information will be shared with the emergency contact. See section 10.2, In-custody death or life-threatening condition notification, for more details.

In addition, the DMN form [BSF674] contains specific questions on self-identified mental health conditions (such as depression or bipolar disorder) and indicators (such as a previous suicide attempt), which may indicate a predisposition to suicide and self-harm. Mental health questions are of a sensitive nature and should be asked in a non-judgemental way. Officers should use a friendly and accepting tone and allow the person time to speak. If a person being detained is believed to be suicidal or self-harmful, see section 10.1, Procedure: suicidal and self-harmful detainees.

The DMN form [BSF674] must be placed in the detainee's case file, and a copy of the form must be given to the following:

- the detainee or designated representative (by hand, by mail or electronically); and
- the detention facility personnel (the healthcare professional).



Paragraph 8(2)(a) of the Privacy Act (consistent use) allows the disclosure of information where the disclosure is made for the purpose for which the information was obtained. The individuals are being detained for IRPA purposes regardless if the detention facility is owned by the CBSA or not, and the disclosure is to ensure detainees' well-being and to assess their health needs.

### **Subsequent assessments**

Until the person is released from detention, a subsequent assessment using the DMN form [BSF674] must be completed:

- at least once every 60 days after every assessment if detainees are detained in a provincial correctional facility; or
- sooner if the detainee self-identifies a change in their medical condition or if a possible change in their medical condition is observed by any custodial staff, regardless of the detention facility.

This is to ensure that the form is up to date in case the detainee needs to be quickly transferred to another detention facility or the CBSA needs to notify the emergency contact(s). For detainees in an IHC, the responsibility lies with the officers working at the IHC. For detainees in a detention facility elsewhere (such as a provincial correctional facility), the responsibility lies with a DLO or an officer designated to perform this function.

## **9.5. Placement: national risk assessment for detention**

The placement in or transfer of a detainee to a detention facility cannot be used as a form of punishment, and the intent of the NRAD form [BSF754] is to ensure national consistency in a transparent and objective way. The officer making the detention decision must complete the NRAD form and must identify the detainee's risk and vulnerability factors to ensure the safety and well-being of the detainee, other detainees and staff. This form is not required if the detainee is released before any placement in or transfer to a detention facility has occurred. An information session on the NRAD form is available to officers in the following training and learning section: [http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index\\_eng.asp](http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index_eng.asp).

### **Detention placement assessment**

Officers must rely on facts and evidence for which there are reasonable grounds to believe that the NRAD risk and vulnerability factors exist. The NRAD risk and vulnerability factors are as follows:

- Risk factors #1 and #2 allocate points if there are reasonable grounds to suspect a detainee is inadmissible due to security grounds or organized criminality.
- Risk factor #3 allocates points based on the number of years that have passed since the last known offence or conviction, if any, that may cause inadmissibility for serious criminality or criminality. Offences where an individual was found not guilty or where charges have been withdrawn must not be counted in the assessment.
- Risk factors #4 and #5 allocated points based on the number of known acts, offences or convictions involving violent or severely violent crime. For the purpose of completing risk factors #4 and #5, an officer could consider the last outstanding charge if the person has been charged but the trial has not been concluded or the conviction date set. These questions apply equally to

persons who have committed violent acts associated with inadmissibility pursuant to paragraph A35(1)(a). Offences where an individual was found not guilty or where charges have been withdrawn must not be counted in the assessment. The following table offers a general overview of common non-violent crimes, violent crimes and severely violent crimes:

| Crime type               | Common crime examples (with criminal code references)   |
|--------------------------|---|
| Non-violent crime        | <ul style="list-style-type: none"> <li>• Possession of child pornography (subsection 163.1(4))</li> <li>• Operation while impaired (section 320.14)</li> <li>• Theft (section 322)</li> <li>• Breaking and entering with intent, committing offence or breaking out (section 348)</li> <li>• Fraud (section 380)</li> <li>• Possession of a controlled substance (section 4 of the Controlled Drugs and Substances Act)</li> <li>• Trafficking in substance (section 5 of the Controlled Drugs and Substances Act)</li> </ul> |
| Threats or violent crime | <ul style="list-style-type: none"> <li>• Uttering threats (section 264.1)</li> <li>• Assault (section 265)</li> <li>• Sexual assault (section 271)</li> <li>• Includes all severely violent crimes (see below)</li> </ul>   |
| Severely violent crime   | <ul style="list-style-type: none"> <li>• Assault with a weapon or causing bodily harm (section 267)</li> <li>• Sexual assault with a weapon, threats to a third party or causing bodily harm (section 272)</li> <li>• Aggravated sexual assault (section 273)</li> <li>• Murder (section 229)</li> <li>• Manslaughter (section 234)</li> <li>• Robbery (section 343)</li> <li>• Torture (section 269.1)</li> </ul>  |

- Risk factor #6 allocates points if in the last two years, a detainee was involved in a serious incident during the arrest or was involved in a major breach of the detention facility rules of an IHC, a provincial or a federal correctional facility or a port of entry or inland office cell. It includes major breaches that have occurred in detention facilities outside Canada. The CBSA National Detention Standards – Disciplinary System define a major breach as the following: a detainee commits, attempts or incites acts that are violent, harmful to others, or cause an unsafe environment in the detention facility (for example, resisting arrest, using physical violence aimed at another person, being in possession of any item that may be considered as an offensive weapon, or throwing objects at another person).
- Risk factor #7 allocates points if a detainee previously escaped or attempted escape from legal custody (e.g. from a detention facility or from the custody of an officer).
- Risk factor #8 allocates points if a detainee remains the subject of an unexecuted criminal warrant for arrest. In the context of completing the NRAD, warrants issued under immigration or traffic laws are not considered as criminal warrants and, as a consequence, do not have any repercussions for this risk factor.

- Vulnerability factor #9 reduces points if a detainee is a vulnerable person. Only one vulnerable category can be selected, even if the detainee is part of more than one vulnerable category. For information on vulnerable persons, see section 6.13.

## Decision

Any additional information supporting the officer's decision must be recorded in the narrative section of the NRAD (such as details of key risk factors, the detainee's comments, incidents and changes in the facility type for detention). Based on the total sum of points attributed to the risk and vulnerability factors, a detainee should be detained in a detention facility according to the total score, as follows:

- 0 to 4 points = IHC (where available)
- 5 to 9 points = IHC or provincial correctional facility (default to IHC where risk can be mitigated)
- 10 points or more = provincial correctional facility

Based on the detainee's NRAD score, ports of entry and inland offices near an IHC can refer detainees for placement in an IHC, if transport can be easily facilitated the same day, or in a provincial correctional facility. Ports of entry and inland enforcement offices not located in close proximity to an IHC can solely refer detainees for placement in a provincial correctional facility. However, inland enforcement offices may later refer detainees for transfer to an IHC based on the detainee's total NRAD score (see section 11). IHC managers are the ultimate decision makers to determine if a detainee's risk factors and behaviour can be appropriately managed within the IHC.

To ensure procedural fairness of each assessment or subsequent assessment, the detainee must be informed of the risk and vulnerability factors taken into consideration, and officers must ask if there is anything the detainee would like to add that may impact their decision before the chosen facility type has been finalized. It is an opportunity for the detainee to bring new elements to the knowledge of the officer, it is not an obligation for the detainee to respond. The officer is not bound by the information given by the detainee; however, the information must be taken into consideration in compliance with procedural fairness. If a detainee refuses to speak with the officer, the officer should rely on other information sources to complete the assessment (e.g. a file review, security guards' observations, incident reports, a designated representative). If the detainee was not afforded an opportunity, the officer must explain why on the NRAD.

Details of the key risk factors, criminal convictions, the detainee's behaviour, information given by the detainee (or the refusal thereof) and any other elements supporting the officer's decision must be recorded in the decision section. This section must be completed to support the decision being made, and it is not sufficient to state "refer to file". The decision must be communicated to the detainee, the NRAD must be placed in the detainee's case file and a copy of the form must be given to the following:

- the detainee or designated representative (by hand, by mail or electronically); and
- the detention facility personnel.

Paragraph 8(2)(a) of the Privacy Act (consistent use) allows the disclosure of information where the disclosure is made for the purpose for which the information was obtained. The individuals are being detained for IRPA purposes regardless if the detention facility is owned by the CBSA or not, and the disclosure is to ensure the safety of the detainee, other detainees and staff where the detainee is being held.

For the initial NRAD assessment, the detention placement decision shall be reviewed prior to the placement of a detainee in a detention facility by the authorities listed below (see section 9.6, Management review of detention cases, for more details).

### **Subsequent assessments**

Until the person is released from detention, a subsequent assessment using the NRAD form [BSF754] must be completed:

- at least once every 60 days after every assessment if detainees are detained in a provincial correctional facility; or
- sooner if new information or a change in circumstances has a repercussion on the detainee's total score or the detention placement, regardless of the detention facility.

Subsequent assessments must be supported by information to corroborate the status quo or the change in the facility type for detention. For detainees held in an IHC, the responsibility lies with the officers working at the IHC. For detainees held in a detention facility elsewhere (such as a provincial correctional facility), the responsibility lies with a DLO or an officer designated to perform this function. Changes in the person's risk and vulnerability factors and the ability to mitigate that risk within an IHC should be considered at each assessment.

Requests for an early subsequent assessment may be received from individuals (e.g. counsels and detainees) from time to time. These requests must be responded to with notes to file, and any new circumstance must be taken into consideration. When a request is made, if the officer responsible for filling out the subsequent assessment is of the opinion that no circumstances have changed (i.e. no impact on the detainee's total NRAD score), then no early subsequent assessment is needed. However, a formal response must be sent to the requestor explaining the subsequent NRAD assessment process and the decision.

### **Detainees medically unfit for placement or transfer**

If a healthcare professional recommends against moving a detainee because of a medical condition, the information must be communicated to an IHC manager. In cases of a disagreement, the IHC manager is the ultimate decision maker able to authorize or deny a detainee's placement or transfer.

The decision to authorize or deny the placement or transfer should be made in consultation with IHC healthcare professionals and take into consideration the safety and well-being of the detainee, other detainees and staff. Due to information privacy laws, healthcare professionals may not be authorized to disclose details or personal information to CBSA staff. However, they can make recommendations on how to facilitate a detainee's placement or transfer or give advice regarding when a detainee should be fit for transfer. If an IHC manager concurs that a detainee is not medically fit for transfer, it should be documented on the NRAD form [BSF754] in the additional information section. Regular follow-up should be done with the healthcare professionals in case the detainee's medical condition improves.

## **9.6. Management review of detention cases**

Despite it not being a legislative requirement, the CBSA has established an administrative process to ensure management oversight and visibility of all continued detention cases. No management permission

is needed for officers to initiate a detention. In addition, no management review is needed if the arresting officer determines release is appropriate.

The term “continued detention” refers to the decision, following an arrest, to maintain detention and have the individual placed in a detention facility. All continued detention cases shall be reviewed by one of the following members of management:

- a superintendent (FB05) or higher regional authority for all port of entry cases; or
- an inland supervisor or manager (FB05/FB06) or higher regional authority for all inland cases.

Should one of the above members of management not be available onsite when continued detention is being considered, officers must call an authorized duty manager or approved management at another location or region if necessary. The management personnel conducting the review of the detention must have experience in the application of the IRPA and to be aware of detention and release procedures. In addition, they must have completed relevant training (e.g. information session on the NRAD form) and have access to GCMS.

## **Part 1 – Legal authority and detention placement**

This first part can be done in person or remotely (e.g. by phone or email after regular office hours), and it must be done prior to the placement of a detainee. Management reviewing the detention case must consider any new information and be able to answer these two questions:

- Does the legal authority exist in the IRPA for this detention?
- Is the initial detention placement decision appropriate?

The management review should focus on the legal authority of the detention, and when clarification is necessary, they should ask questions to better understand the relevant facts of the case. They may give advice to the officer regarding the case, but they should avoid challenging the officer’s detention decision if the legal authority to detain exists. This way, the officer’s detention decision is not fettered by a higher level of authority, and the decision maker can clearly be identified. Here are some facts that must be clarified:

- What is the detainee’s immigration status (Canadian citizen, registered Indian, permanent resident, protected person or foreign national)?
- Where the detention did occur (in Canada or on entry into Canada)?
- What are the applicable detention grounds?

In cases where the detention decision is found to be lacking legislative authority under the IRPA, the reviewing manager must release the detainee. See section 12, Procedure: release by officer before the first detention review, for more information.

The management review should also look at the NRAD risk and vulnerability factors, the given details by the detainee, the total score and the detainee placement decision. Accurate NRAD information is relevant even for ports of entry and inland enforcement offices not located in close proximity to an IHC, as the detainee may later be transferred to an IHC based on their total NRAD score. Once the legal authority of the detention and placement decision have been reviewed, the name of the reviewing manager must be added to the NRAD form by the officer. In the case of a disagreement regarding the total NRAD score or detention placement, the reviewing manager is responsible for performing the subsequent NRAD

assessment by filling out an NRAD form [BSF754]. This way, the new decision maker can clearly be identified.

## **Part 2 – Quality review of detention cases**

This second part must be done in person prior to the first IRB detention review and may be done by another member of management who meets the above requirements. Reviewing management must confirm that the detention forms are properly completed and placed in the person's file and the required forms are uploaded in GCMS. They must confirm that detention factors are clearly stated in the detention notes [BSF508], aligned with the selected detention grounds and supported by relevant facts. They must confirm how the best interest of the child and ATDs have been considered and if they would be deemed appropriate at a later time. Finally, reviewing management must confirm that data entry in NCMS is done or arrangements were made for its completion. See Annex A – Detention Checklist for more information.

Once the detention paper file is completed and has been reviewed by management, it may leave the originating port of entry or inland enforcement office.

## **9.7. Detention review after 48 hours and informing the IRB**

If the detention continues, the Immigration Division of the IRB will review the reasons for continued detention within 48 hours following the start of the detention or as soon as possible thereafter. As required under subsection A55(4), the officer shall without delay give notice to the Immigration Division by sending the Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules form [BSF524] to the registry by facsimile. The officer will retain on the file evidence that the Immigration Division has been informed. A copy of the facsimile receipt is evidence that the transmission has been completed. For more information on detention review pursuant to section A57, as well as the rules applicable to the Immigration Division, see ENF 3, Admissibility, Hearings and Detention Review Proceedings. See section 9.1, Data entry, for more information.

Should an individual be subject to a 48-hour detention review and detention be maintained by the IRB member, the detainee must be brought before the Immigration Division at least once in the seven-day period following the first review, then at least every 30 days following the preceding review. When the Immigration Division has jurisdiction, that is, after the first detention review is held, hearings officers may make an application for an early detention review if continued detention is no longer justified.

The processes for a designated foreign national and an individual named in a security certificate are different. For more information on detention review pursuant to the Immigration Division Rules, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.

## **10. Care of detainees while in short-term detention rooms or cells**

A short-term detention room or cell is an area that the CBSA has designated as secure at a POE office or an inland enforcement office pending the detainee's placement in or transfer to another location. A short-

term detention room or cell is not considered as a detention facility because it was not designed for long detentions and since few services are available to detainees. A detainee should not spend more than 24 consecutive hours in a short-term detention room or cell before their release or transfer to a more suitable detention facility.

Officers or contracted security guards must conduct a visual check or video monitoring of detainees while in short-term detention rooms or cells at least once every 15 minutes using the Detention Cell Log and Instructions [BSF481]. Officers should consult and follow the Enforcement Manual, Part 6, Chapter 2, Care and Control of Persons in Custody.

## 10.1. Procedure: suicidal and self-harmful detainees

The IRPA does not authorize the detention of an individual for their own safety or protection, except with special considerations for minor children. Persons who are believed to be suicidal or prone to self-harm are considered vulnerable persons; see section 6.13. If an officer has reason to believe an individual is suicidal or prone to self-harm, the first intervention is for the officer to show concern and speak with the individual. For more information, officers should complete the online training course entitled "Prevention of Suicide and Self-Harm among Detainees" (H2047-P) available through the CAS portal.

Mental health questions are of a sensitive nature and should be asked in a non-judgemental way. Officers should use a friendly and accepting tone and allow the person time to speak. Contrary to common belief, asking someone if they are having thoughts of killing themselves will not make them suicidal. If an officer is concerned about a risk of suicide, the officer must ask questions to the detainee. The following examples can be used to determine if the detainee has thoughts of suicide:

- The situation you describe sounds serious. I want to know if you have considered committing suicide.
- I can see you are feeling down or panicky. Sometimes when people feel like this, they have thoughts of killing themselves. Are you thinking of suicide?

If a detainee says that they are thinking about ending their life, the officer must acquire additional information from the detainee. The following examples can be used to investigate the detainee's plan for suicide:

- I want to know if you have a plan to commit suicide.
- How do you plan to take your life?
- Where do you plan to do this?
- Do you have a means to do this?

Those at the highest risk for suicide in the near future have a specific suicide plan, the means to carry out the plan, a time set for doing it and an intention to do it. If a detainee has a plan and intends to end their life soon, do not leave them alone. Officers should call an IHC healthcare professional (if available) or local crisis support centre right away and put them in contact with the detainee.

At a port of entry or an inland enforcement office, if a detainee is believed to be suicidal or self-harmful, a constant visual check or video monitoring by an officer or a contracted security guard is required using

the Detention Cell Log and Instructions [BSF481]. The detainee is to be kept under continuous monitoring until:

- it is discontinued by the immediate superintendent/manager on duty;
- the detainee is released from custody; or
- the detainee is transferred to an IHC or a provincial correctional facility.

Once the detainee has been transferred to an IHC or a provincial correctional facility, the healthcare professional will make an assessment to determine if the monitoring should continue or not.

## 10.2. In-custody death or life-threatening condition notification

In the case of an in-custody death, where there is an investigative body (e.g. local police or RCMP) involved, it will notify the emergency contact. In cases where an investigative body is not undertaking the notification, it will be done by the regional director general. See Operational Bulletin PRG-2014-51: Protocol Regarding the Death of an Individual Detained Pursuant to the IRPA, the CBSA guidelines for responding to a serious incident and death in CBSA custody or control, and the Public Communications Protocol – In-Custody Death or Serious Injury for more details.

In the event of a life-threatening health condition to the detainee in CBSA custody or control during the detention period, if requested by the detainee on the DMN form [BSF674], the duty manager has the responsibility to contact the emergency contact. Phone calls to emergency contact(s) are only required in instances where we have reasons to believe the condition is life-threatening or death is imminent.

## 11. Placement and transfer of detainees from a non-IHC region to an IHC

This section is intended for non-IHC regions (i.e. Atlantic, Northern Ontario, Southern Ontario and Prairies). It clarifies their options regarding placement in and transfer of detainees to an IHC (i.e. Quebec, Greater Toronto Area and Pacific). Based on the detainee's NRAD score, ports of entry and inland offices near an IHC may refer detainees for placement in an IHC, if transport can be easily facilitated the same day, or in a provincial correctional facility. Ports of entry and inland enforcement offices not located in close proximity to an IHC can solely refer detainees for placement in a provincial correctional facility. However, inland enforcement offices may later refer detainees for transfer to an IHC based on the detainee's total NRAD score. The guiding principles for achieving national consistency in the placement and transfer of detainees from a non-IHC region to an IHC region are as follows:

- IHCs play a key role in the effective management of the CBSA national detention program and are available to all regions.
- Based on the NRAD assessment, regional IHCs must accommodate the maximum number of detainees possible to reduce reliance on provincial correctional facilities, regardless of where a detention is originating from.
- Detainee placement and transfer requests from non-IHC regions must be accepted in the same way as if requests were originating from within the IHC region.
- Where detainee transfer to an IHC region is requested, all efforts must be made to facilitate detainee placement in and transfer to an IHC, and in the case of a disagreement, the IHC



manager is the ultimate decision maker.

### Regional IHCs and the non-IHC regions they serve

| IHC                | Placement in an IHC for non-IHC regions   | Transfer to an IHC for non-IHC regions   |
|--------------------|---|--|
|                    | The following ports of entry and inland offices are near enough to an IHC to expect a same-day detainee transport:  | The following inland offices are further away from an IHC but may request a detainee transfer to an IHC:   |
| <b>Laval IHC</b>   | <ul style="list-style-type: none"> <li>Northern Ontario Region: Cornwall, Prescott, Lansdowne and Macdonald–Cartier International Airport ports of entry.</li> <li>Northern Ontario Region: Cornwall, Ottawa and Gatineau inland enforcement offices.</li> </ul>                | <ul style="list-style-type: none"> <li>Atlantic region: all inland enforcement offices.</li> </ul>   |
| <b>Toronto IHC</b> | <ul style="list-style-type: none"> <li>Southern Ontario Region: Fort Erie, Niagara Falls Rainbow Bridge, Queenston–Lewiston Bridge and London International Airport ports of entry.</li> <li>Southern Ontario Region: London and Niagara inland enforcement offices.</li> </ul> | <ul style="list-style-type: none"> <li>Northern Ontario Region: Kingston and Thunder Bay inland enforcement offices.</li> <li>Southern Ontario Region: Windsor and Sarnia inland enforcement offices.</li> </ul> |
| <b>Surrey IHC</b>  | Not applicable.   | Prairies Region: All inland enforcement offices.   |

Transfers to an IHC in a region other than the identified serving IHC may be considered on a case-by-case basis but should not be common practice.

## 11.1. When a detainee's placement or transfer should be considered

Detainees with a total NRAD score of 0 to 4 or 5 to 9 points (if risk can be mitigated) may be placed in or transferred to an IHC region. In non-IHC regions, prior to making the placement or requesting the transfer of a detainee to an IHC, officers must take into consideration the following factors:

- the expected length of detention;
- the imminence of a release on an alternative to detention;
- the case complexity;
- the detainee's opinion;
- the detainee's family location and relationships;
- the detainee's legal or designated representative's opinion; and
- other personal ties to a specific region.

While efforts should be made, non-IHC regions have flexibility in determining if and when a detainee should be placed in or transferred to an IHC region. It is expected that some cases can be deemed not appropriate for placement in or transfer to an IHC region based on one or more of the factors listed above. These factors and any additional information supporting the officer's decision must be recorded in the NRAD narrative section.

## 11.2. Requirements

Detainee placement requests from non-IHC regions must be accepted in the same way as requests originating from within the IHC region. Here are examples where it would be appropriate to place a detainee in an IHC:

- In a non-IHC region, an inadmissible foreign national wishes to withdraw his application at a port of entry (airport) that is near an IHC. The foreign national is unable to leave the port of entry because the last return flight has already left and no other return flight is available for the next two days. The officer feels that the foreign national is unlikely to appear for his flight. The officer has considered all other ATDs; however, none of them are deemed appropriate to mitigate the risk. The officer decides to detain the foreign national to complete the examination until the next return flight is available. The detainee's total NRAD score is 6 and, after review by a superintendent, the detainee is placed in an IHC, as the risk can be mitigated in the IHC.
- In a non-IHC region, an inadmissible foreign national is detained at an inland office that is near an IHC. The officer believes that the foreign national is unlikely to appear for removal. The officer has considered ATDs; however, none of them can mitigate the risk. The detainee's total NRAD score is 3 and, after review by an inland enforcement supervisor, the detainee is placed in an IHC.

### Requirements for the transfer to an IHC

When a detainee is held in a provincial correctional facility, consideration for transfer to an IHC should be given by the DLO or an officer designated to perform this function.

Inland enforcement offices not located in close proximity to an IHC may refer detainees for transfer to an IHC based on the detainee's total NRAD score. Requests for transfer to an IHC should not be undertaken before a 48-hour detention review. If the detention is maintained, transfers may be requested after the 48-hour detention review for detainees transported by land or after the seven-day detention review for detainees transported by air. In order to ensure management oversight and visibility of all detention cases, all decisions to transfer a detainee to an IHC shall be reviewed by an IHC manager prior to the transfer. Where detainee transfer to an IHC region is requested, all efforts must be made to facilitate detainee transfer, and in cases of disagreement, the IHC manager is the ultimate decision maker. Here are examples where it would be appropriate to transfer a detainee to an IHC:

- In a non-IHC region, the detention of an inadmissible foreign national has been maintained following the seven-day detention review because the detainee is unlikely appear for removal. The DLO does not expect an early detention review prior to the 30-day review. In consultation with the detainee, the DLO recommends a transfer to an IHC. The detainee's total NRAD score is 3 and, after review by an IHC manager, the detainee will be transferred to the IHC once the transfer arrangements have been confirmed.
- In a non-IHC region, an inadmissible permanent resident's detention has been maintained following the 30-day detention review on the grounds of a danger to the public. The officer designated to fill out the subsequent NRAD assessment does not expect that the detainee will be released at the next detention review, and they continue to await a danger opinion from IRCC. The officer also noted that the detainee would like to be transferred to an IHC and has relatives in the IHC region. The detainee's total NRAD score is 9. After discussion and review by an IHC manager, it is determined that the detainee's risk factors and behaviour can be appropriately

managed within the IHC. The detainee will be transferred to an IHC once transfer arrangements have been confirmed.

In preparation for the detainee's transfer and to ensure the safety and well-being of the detainee, other detainees and staff, the requesting DLO or the officer designated to perform this function has the responsibility to obtain the following from the detention facility where the detainee is currently being detained prior to the transfer:

- information regarding the detainee's behaviour, incidents involving the detainee and reported breaches of security;
- information regarding physical and mental health needs and current treatment;
- the contact information of the healthcare professional at the provincial correctional facility; and
- comments and recommendations from the healthcare professional to ensure the detainee is suitable for transfer.

### **11.3. Placement and transfer refusal**

In exceptional circumstances, an IHC manager may request that the detainee's placement or transfer be postponed due to circumstances outside their control such as a shortage of availability in the requested IHC section (male, female and family), the IHC having nearly reached maximum capacity (85% and above), or a significant event in progress (e.g. major disturbance) that has temporarily reduced the IHC's capacity. In addition, an IHC manager may refuse a detainee's placement or transfer if the perceived risk posed by the detainee cannot be mitigated in the IHC. Transfers to an alternate IHC may be considered on a case-by-case basis but should not be common practice.

Should an IHC manager be unable or unwilling to accept a detainee from a non-IHC region, the rationale and potential future transfer dates must be communicated by the IHC to the requesting region and the National Headquarters – Inland Enforcement Operations Unit.

### **11.4. Detainee case management**

#### **Detainee case management following placement in an IHC**

Due to proximity, the non-IHC region should continue to manage the detainee's case file (e.g. investigation, detention reviews and removal, updates to GCMS and NCMS) and leverage remote working tools as required (e.g. teleconference and videoconference) even after the detainee has been placed in an IHC. The IHC region will manage the detention responsibilities, such as detention placement; discipline; subsequent NRAD and Detainee Medical Needs assessments; communication and meetings with community liaison officers, NGOs and legal representatives; and other interviews as required. Where the IHC region does not have information to respond to detainee requests, they should liaise with the file holder to obtain the required information.

If the non-IHC region is unable to manage the detainee's case file (e.g. the hearings officers in the non-IHC region are not available), then the whole file must follow the detainee and the IHC region must be notified. The referring superintendent, inland supervisor or assistant director must notify the receiving IHC region with the following information: the UCI, a case summary and the next detention review date. The notification must be sent to the following email addresses:

- **Laval IHC:** [QUE CPI Agents DL@cbsa-asfc.gc.ca](mailto:QUE_CPI_Agents_DL@cbsa-asfc.gc.ca),  
[QUE Mtl ASFC Aud Det Immigration Adjoints DL@cbsa-asfc.gc.ca](mailto:QUE_Mtl_ASFC_Aud_Det_Immigration_Adjoints_DL@cbsa-asfc.gc.ca) and [ASFC.O.I-R.DA/I-R.AD.O.CBSA@cbsa-asfc.gc.ca](mailto:ASFC.O.I-R.DA/I-R.AD.O.CBSA@cbsa-asfc.gc.ca)
- **Toronto IHC:** [CBSA-ASFC GTAR EIOD-Dist Holding Centre@cbsa-asfc.gc.ca](mailto:CBSA-ASFC_GTAR_EIOD-Dist_Holding_Centre@cbsa-asfc.gc.ca)
- **Surrey IHC:** [PAC-Dist CBSA EID Detention Operations@cra-arc.gc.ca](mailto:PAC-Dist_CBSA_EID_Detention_Operations@cra-arc.gc.ca)

## **Detainee case management following transfer to an IHC**

Due to distance, a non-IHC region cannot continue to manage the detainee's case file once it has been transferred to an IHC. The whole file must be transferred with the detainee, and the IHC region must be notified. The superintendent, inland supervisor or assistant director must make a formal request to the IHC region at least two working days before the transfer (see above for notification emails) to allow enough time to respond and make arrangements.

## **11.5. Notification**

### **Legal counsel**

In the event of a transfer to another region or facility, the detainee has the responsibility to inform their legal counsel and family members of the transfer and new location, if so desired. The CBSA must inform the detainee of their responsibilities and afford them the opportunity to contact their legal counsel prior to the anticipated transfer. If a detainee requires legal aid assistance, they should be referred to the provincial legal aid services in the region where they are currently detained.

### **Immigration and Refugee Board of Canada**

Detainee placement in and transfer to a serving IHC will not have significant repercussions on the Immigration and Refugee Board (IRB) process because it aligns for the most part with the current IRB regional structure.

The transfer of a detainee to an IHC outside the scope of the IRB regional office that originally heard the matter requires a notification to the board from the receiving region as soon as possible for the scheduling of subsequent detention reviews and any other upcoming IRB hearings (e.g. a detainee transferred from the Prairies Region to the Toronto IHC). Any such request to the IRB must be processed in accordance with these guidelines (see [ENF 3, Admissibility, Hearings and Detention Review Proceedings](#) for more details).

## **11.6. Transport**

The transport of a detainee for placement in or transfer to an IHC shall be undertaken in line with national detention standards for transport and the Enforcement Manual, Part 6, Chapter 8, [Vehicular Transport of Persons under Arrest or Detention](#).

### **Transport by contracted security guards or CBSA officers**

To the extent possible, contracted security guards should be used for detainee transport to and from facility locations. Where contracted security guards are not in place (i.e. regions without contracts), requests to use contracted security guards from another region may be supported with prior approval

from the IHC manager or detention program manager (e.g. a detainee from Northern Ontario region is being transported to the Toronto IHC and contracted security guards from Greater Toronto Area region are requested for the transport). Requests for transfer should be timely, and all parties should be informed as soon as practicable to enable efficient planning and logistics and minimize the use of overtime and extra duty pay.

Contracted security guard contracts are in place in the following regions: Greater Toronto Area Region, Quebec Region, Prairies Region, and Pacific Region. Where a transport is inter-provincial, the security contract must support the use of contracted security guards for transport between provinces. Discussions with the IHC or detention program manager responsible for the administration of the security guard contract and the contracted security supervisor or operational manager may be required to ensure that licensing in each province is in place.

### **Transport by land**

All security guard statements of work contain a clause that includes travel within Canada, and their travel is not limited to one region. Security guards can be from the originating region, the receiving region or a combination of both as appropriate and approved by the IHC or detention program managers of both regions.

### **Transport by air**

Where a detainee is arrested and detained and requires transfer to an admitting facility within the same region, transport by air may be a viable option. Currently the only region able to support the use of contracted security guards for transport of detainees by air is the Pacific Region. For all other regions not served by the Surrey IHC, where transport by airplane is needed, transport of detainees will be done by CBSA officers.

The assignment of CBSA officers to transport detainees (e.g. if security guards are unable to mitigate the risk posed by a detainee) must be authorized by a delegated manager.

### **Transport upon release**

It is against CBSA policy to use a federal government vehicle to transport non-detained passengers due to liability concerns. This applies to all provinces regardless if the province insures the vehicle. The Enforcement Manual, Part 6, Chapter 8, Vehicular Transport of Persons under Arrest or Detention, says, "It is the policy of the CBSA to transport persons under arrest or detention when required in support of the enforcement and/or administration of CBSA legislation." CBSA officers do not have the legislated authority to transport a person when the proceeding is not related to CBSA business. CBSA officers cannot use their powers under the IRPA or IRPR to achieve goals that are not in relation with the IRPA or IRPR.

Upon release, an individual is free to remain in the IHC region or to return to their home community in a non-IHC region as long it does not contravene an imposed condition. Although it is not required by legislation, the IHC region will pay the cost of the individual returning home in order to ensure the individual safely reaches their destination. Nevertheless, the individual may refuse CBSA assistance and travel by their own means. After approval by an IHC manager, the individual, including their personal

effects, will be provided prearranged transport (or money) to the degree possible and an itinerary to return to the final destination of:

- their place of original detention;
- their home community in Canada; or
- any other destination no further in distance than the place of original detention, if the individual chooses.

The most economical means (e.g. public transit, bus, train or plane) should be used, and arrangements should be made to avoid the need for overnight accommodation. However, when the individual's intention is to remain in the IHC region, there is no need to do so.

## 12. Procedure: release by officer before the first detention review

In the event that the grounds for detention cease to exist before the Immigration Division has conducted the first detention review (48-hour review), the officer or the reviewing manager may release the person being detained under subsection A56(1). Detention may no longer be justified because an ATD that sufficiently mitigates the risk posed has been identified. The following table contains the main tasks that must be completed to release an individual before the first detention review.

| Task   | Responsibility and References  | Uploaded to GCMS | Paper copies |                                       |                    |     |
|--|--|------------------|--------------|---------------------------------------|--------------------|-----|
|  |  |                  | Case file    | Detainee or designated representative | Detention Facility | IRB |
| If the detainee has already been placed in or transferred to a detention facility, fill out the Authority to Release from Detention form [BSF566]  | Officer or management  | X                | X            |                                       | X                  |     |
| If any conditions apply, fill out the Acknowledgement of Conditions (the Immigration and Refugee Protection Act) form [IMM 1262E]  | Officer or management<br><br>See prescribed conditions below.<br>See <a href="#">ENF 8, Deposits and Guarantees</a><br>See <a href="#">ENF 34, Alternatives to Detention</a> | X                | X            | X                                     |                    |     |
| Data entry in GCMS and NCMS or make arrangements with the nearest inland enforcement office for the earliest possible data entry in NCMS.  | Officer or manager<br><br>See section 9.1, Data entry  |                  |              |                                       |                    |     |
| Use the original Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules form [BSF524], write "RELEASED" on it and notify the IRB – Immigration Division | Officer or manager   | X                | X            |                                       |                    | X   |

Section A56 authorizes the officer to impose any conditions that they consider necessary. These conditions are imposed using the Acknowledgement of Conditions (the Immigration and Refugee Protection Act) form [IMM 1262E]. Procedures for deposits and guarantees are found in ENF 8, Deposits and Guarantees, and procedures for ATDs are found in ENF 34, Alternatives to Detention.

### **Prescribed conditions**

Subsection A56(3) states that if an officer orders the release of a permanent resident or foreign national who is the subject of either a report on inadmissibility on grounds of security that is referred to the Immigration Division, or a removal order for inadmissibility on grounds of security, the officer must also impose the prescribed conditions on the person. The conditions that must be imposed on a foreign national or permanent resident are the following (section R250.1):

- (a) to inform the CBSA in writing of their address and, in advance, of any change in that address;
- (b) to inform the CBSA in writing of their employer's name and the address of their place of employment and, in advance, of any change in that information;
- (c) unless they are otherwise required to report to the CBSA because of a condition imposed under subsection A44(3), A56(1), A58(3) or A58.1(3) or paragraph A82(5)(b), to report once each month to the CBSA;
- (d) to present themselves at the time and place that an officer, the Immigration Division, the Minister or the Federal Court requires them to appear to comply with any obligation imposed on them under the IRPA;
- (e) to produce to the CBSA without delay the original of any passport and travel and identity documents that they hold, or that they obtain, in order to permit the CBSA to make copies of those documents;
- (f) if a removal order made against them comes into force, to surrender to the CBSA without delay any passport and travel document that they hold;
- (g) if a removal order made against them comes into force and they do not hold a document that is required to remove them from Canada, to take without delay any action that is necessary to ensure that the document is provided to the CBSA, such as by producing an application or producing evidence verifying their identity;
- (h) to not commit an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
- (i) if they are charged with an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that charge in writing and without delay;
- (j) if they are convicted of an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that conviction in writing and without delay; and
- (k) if they intend to leave Canada, to inform the CBSA in writing of the date on which they intend to leave Canada.

## **12.1. Release: mandatory arrest and detention of a designated foreign national**

Under subsection A56(2), officers cannot release a designated foreign national who is detained and who was 16 years of age or older on the day of the arrival that is the subject of the designation in question until:

- (a) a final determination is made to allow their claim for refugee protection or application for protection;
- (b) they are released as a result of the Immigration Division ordering their release under section A58; or
- (c) they are released as a result of the Minister ordering their release under section A58.1.

For more information on detention review process, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.



## Annex A – Detention Checklist

|  |                                  |                          |  |                           |                          |  |
|--|----------------------------------|--------------------------|--|---------------------------|--------------------------|--|
| <b>Client Name</b>   | <b>UCI</b>                       |                          |  |                           |                          | <b>Date</b>  |
| <b>Officer responsibility</b>  |                                  |                          |  |                           |                          | <b>Management responsibility</b>   |
| <b>Forms/Tasks</b>   | <b>Uploaded to GCMS</b>          | <b>Case file</b>         | <b>Detainee or designated representative</b> | <b>Detention Facility</b> | <b>IRB</b>               | <b>Management review (Part 2) – quality review of the detention case</b> |
| BSF561 – Notice of Arrest<br>N/A for subsection A55(3)   | <input type="checkbox"/>         | <input type="checkbox"/> | <input type="checkbox"/>                     |                           |                          | <input type="checkbox"/>   |
| BSF776 – Notice of Rights Conferred by the Vienna Convention   | <input type="checkbox"/>         | <input type="checkbox"/> | <input type="checkbox"/>                     |                           |                          | <input type="checkbox"/>   |
| IMM1265B – Interpreter Declaration   |                                  | <input type="checkbox"/> |  |                           |                          | <input type="checkbox"/>   |
| Photograph and fingerprint   |                                  | <input type="checkbox"/> |  |                           |                          | <input type="checkbox"/>   |
| Query the National Crime Information Center and the Canadian Police Information Centre   |                                  | <input type="checkbox"/> |  |                           |                          | <input type="checkbox"/>   |
| BSF5012 – Detention brochure with facility info (name, address and telephone number), any other regional detention facility information. The DLO's or designated officer's contact information for provincial correctional facility only |                                  |                          | <input type="checkbox"/>                     |                           |                          |  |
| BSF481 – Detention Cell Log, and conduct a visual check or video monitoring of detainees while in short-term detention rooms or cells at least once every 15 minutes.  | <input type="checkbox"/>         | <input type="checkbox"/> |  |                           |                          | <input type="checkbox"/>   |
| BSF508 – Detention Notes   | <input type="checkbox"/>         | <input type="checkbox"/> | <input type="checkbox"/>                     |                           | <input type="checkbox"/> | <input type="checkbox"/>   |
| BSF510 – Minister's Opinion Regarding the Foreign National's Identity – only where identity has not been established   | <input type="checkbox"/>         | <input type="checkbox"/> |  |                           | <input type="checkbox"/> | <input type="checkbox"/>   |
| BSF674 – Detainee Medical Needs  | <input type="checkbox"/>         | <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>  |                          | <input type="checkbox"/>   |
| BSF754 – National Risk Assessment for Detention  | <input type="checkbox"/>         | <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>  |                          | <input type="checkbox"/>   |
| Management review (part 1) of the legal authority and detention placement. Add the name of the reviewing manager to the NRAD form.   |                                  |                          |  |                           |                          |  |
| BSF304 – Order for Detention   | <input type="checkbox"/>         | <input type="checkbox"/> |  | <input type="checkbox"/>  |                          | <input type="checkbox"/>   |
| Notify the contracted security guards of all transport requests (if needed)  |                                  |                          |  |                           |                          |  |
| BSF524 – Request for Admissibility Hearing/Detention Review  | <input type="checkbox"/>         | <input type="checkbox"/> |  |                           | <input type="checkbox"/> | <input type="checkbox"/>   |
| Notify the Canadian Red Cross for unaccompanied minors, persons unable to appreciate IRB proceedings, emerging issues  |                                  | <input type="checkbox"/> |  |                           |                          | <input type="checkbox"/>   |
| Data entry in GCMS and NCMS or arrangements have been made   |                                  |                          |  |                           |                          | <input type="checkbox"/>   |
| <b>Officer Name</b>  | <b>Reviewing Management Name</b> |                          |  |                           |                          |  |

**Place on client's physical file once completed**

# Annex B – National Directive for the Detention or Housing of Minors

## 1. INTRODUCTION

The Canada Border Services Agency (CBSA) is responsible for the administration and enforcement of the Immigration and Refugee Protection Act (IRPA), including the arrest and detention of permanent residents and foreign nationals in Canada. When exercising their authority to arrest and detain under IRPA and the Immigration and Refugee Protection Regulations (IRPR), CBSA officers are guided by jurisprudence as well as internal policies, directives and guidelines. Canada's immigration detention program is based on the principle that detention shall be used only as a last resort, in extremely limited circumstances and only after appropriate alternatives to detention (ATDs) are considered and determined to be unsuitable or unavailable.

This Directive is fully aligned with the Ministerial Direction issued by the Minister of Public Safety and Emergency Preparedness.

## 2. PREAMBLE

Canada's international obligations and domestic legislative and policy frameworks are the broad underpinnings of this Directive. Section A60 affirms the principle that the detention of a minor must be a measure of last resort, taking into account other applicable grounds and criteria, including the best interests of the child (BIOC). The United Nations *Convention on the Rights of the Child* (CRC), to which Canada is a party, states that the BIOC shall be a primary consideration in all state actions concerning children. In recognizing the vulnerability of children and research on the detrimental effects of detention and family separation on children, the CBSA developed the *National Directive for the Detention or Housing of Minors* for operational use, to achieve better and consistent outcomes for minors affected by Canada's immigration detention system.

## 3. DEFINITIONS

**Alternative Arrangement for Minors (AAM):** the transfer of custody of an accompanied or unaccompanied **non-detained** minor to a family member or a trusted friend/community member (who is not under CBSA custody), child protection services or a community-based organization. AAM is a new process in the CBSA's National Case Management System (NCMS).

**Alternatives to Detention (ATDs):** a release program that ensures people (adult or minor) are not detained under the IRPA at an Immigration Holding Centre (IHC) or provincial or any other facility for reasons relating to their immigration status in Canada. ATDs include allowing individuals to live in non-custodial, community-based settings while their immigration status is being resolved, which may include in-person reporting, deposits and guarantees, community case management and supervision and electronic supervision tools (e.g. voice reporting with location services).

**Best Interests of the Child (BIOC):** an international principle to ensure children enjoy the full and effective benefit of all their rights recognized in Canadian law and the CRC. It is also a rule of procedure that includes an assessment of the possible impact (both positive and negative) of a decision on the child or children concerned.

**Community-based organizations (CBOs):** non-profit groups that work at a local level to improve life for residents. The focus is on building equality across society in all streams – health care, environment, quality of education, access to technology, access to spaces and information for the disabled, to name but a few.

**Detainee or detained:** an adult or minor subject to an Order for Detention under section A55.

**Family:** (a) parent(s) or legal guardian(s) (p/lg) and a dependent minor. This may also include family members as defined by IRPR and situations where siblings are travelling together without their p/lg.

**Housed minor:** a foreign national, permanent resident or Canadian citizen who, after the completion of a BIOC interview, is kept with their detained p/lg at an IHC at the p/lg's request. A housed minor is not subject to an Order for Detention and is free to remain in and re-enter the IHC subject to the p/lg's consent and in accordance with the rules and procedures of that facility.

**Minor:** defined under the IRPA and the CRC as a person under the age of 18. In some provinces, a youth aged 16 or 17 is not considered a minor (see Annex D). However, this does not change the fact that they are considered to be a minor in the federal context (subsection R249).

**Non-compliance:** failure or refusal to comply, as with a law, regulation, or term of a condition.

**Segregation (administrative):** the separation of persons to prevent association with others.

**Unaccompanied minor:** a minor or siblings travelling together who do(es) not arrive in Canada as a member of a family or to join such a person.

## 4. OBJECTIVES

1. To stop detaining or housing minors and separating families, except in extremely limited circumstances.
2. To actively and continuously seek ATDs or AAMs when unconditional release is inappropriate.
3. To preserve the family unit for overall well-being and continuity of care.
4. To ensure that the detention or housing of a minor or the separation of a minor from their detained p/lg is for the shortest time possible.
5. To never place minors in segregation (or segregate them) at an IHC or provincial or any other facility.

## 5. LEGISLATIVE AUTHORITIES

**Section A55** contains the arrest and detention provisions applicable to both adults and minors:

A55(1) and (2) – A designated officer may arrest and detain, with (1) or without (2) a warrant, when:

- the officer has reasonable grounds to believe a person is inadmissible to Canada and
  - is a danger to the public; or
  - is unlikely to appear for an immigration process (examination, admissibility hearing, minister's delegate review, or removal); or

- the officer is not satisfied of the identity of a foreign national in the course of any procedure under the IRPA.

A55(3) – A designated CBSA officer may detain a person on entry into Canada (limited to port of entry [POE] cases) when:

- the officer considers it necessary to do so in order for the examination to be completed; or
- the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality.

A55(3.1) – It is mandatory to arrest and detain a designated foreign national who is 16 years of age or older on the day of the arrival that is subject of the designation made by the Minister of Public Safety and Emergency Preparedness pursuant to subsection A20.1(1).

**Section A60** enshrines the principle that the detention of a minor is a measure of last resort while concurrently legislating that the BIOC must always be considered:

For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

In addition, **section R249** outlines special considerations on the detention of minors:

- (a) the availability of alternative arrangements with local childcare agencies or child protection services for the care and protection of the minor children;
- (b) the anticipated length of detention;
- (c) the risk of continued control by the human smugglers or traffickers who brought the children to Canada;
- (d) the type of detention facility envisaged and the conditions of detention;
- (e) the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained or housed minor children; and
- (f) the availability of services in the detention facility, including education, counselling and recreation.

Other factors are prescribed in **section R248** for consideration before a decision is made on detention or release if it is determined that there are grounds for detention:

- (a) the reason for detention;
- (b) the length of time in detention;
- (c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;
- (d) any unexplained delays or unexplained lack of diligence caused by the Department or the person concerned;
- (e) the existence of alternatives to detention; and
- (f) the best interests of a directly affected child who is under 18 years of age.

**Subsection R248.1 (1)** states that for the purpose of paragraph R248(f) and for the application, in respect of children who are under 18 years of age, of the principle affirmed in section A60 of the Act, that

a minor child shall be detained only as a measure of last resort, the following factors must be considered when determining the best interests of the child:

- (a) the child's physical, emotional and psychological well-being;
- (b) the child's healthcare and educational needs;
- (c) the importance of maintaining relationships and the stability of the family environment, and the possible effect on the child of disrupting those relationships or that stability;
- (d) the care, protection and safety needs of the child; and
- (e) the child's views and preferences, provided the child is capable of forming their own views or expressing their preferences, taking into consideration the child's age and maturity.

In addition, **subsection R248.1(2)** specifies that for the purpose of paragraph R248(f), the level of dependency of the child on the person there are grounds to detain shall also be considered when determining the best interests of the child.

The BIOC factors are binding on all relevant decision makers (border service officers, inland enforcement officers, hearings officers and hearings advisors, Immigration Division members of the IRB, etc.). Note that paragraph R248(f) enshrined recognition of the best interests of a non-detained (e.g. housed) child into law, which was a legislative gap. This amendment and list of factors do not suggest that the BIOC outweigh all other factors of the case: the BIOC are primary factors to be weighed against other primary factors, including those listed in paragraphs R248(a) to R248(e).

The following is a possible scenario that may be encountered in a BIOC interview:

- An irregular arrival of a family consisting of a father, mother, and two biological children (ages 9 and 10) seeking asylum in Canada.
- The father has a bona fide identity document, while the other family members do not.
- Mother and children are cooperative; no credibility concerns.
- The father admits to foreign criminal convictions with a potential for a subsection A36(1) inadmissibility and with potential violence; information on convictions is unavailable.

Sub-scenario 1: Nobody in the family speaks English or French; through an interpreter, the parents indicate no next of kin in Canada and are adamant that they stay together. No visible signs of distress are observed despite a year spent at a refugee camp.

BIOC determination 1: The CBSA officer weighs the case against prescribed legislation, specifically paragraph R249(d)(f) and subsections R248(1) and (2), and arrives at the decision to detain the father, as an ATD would not be appropriate, and to keep the family together at an IHC. An ATD review will be conducted as more information becomes available.

Sub-scenario 2: Each child is interviewed separately from their parents. Both children speak some English; they express the desire to go to school, indicate a degree of domestic violence and state that their mother's sister (a successful refugee claimant) lives in Montreal.

BIOC determination 2: The CBSA officer considers all facets of the case, specifically paragraphs R249(a) and R248(f) and subsection R248(1), and decides to detain the father at the IHC and release the mother and children. An ATD review will be conducted on the father as more information becomes available.

## 6. FUNDAMENTAL CONSIDERATIONS

1. Detention of a minor is a measure of last resort (see section A60 above). Detention is to be avoided to the greatest extent possible and applied for the shortest period possible.
2. AAMs and/or ATDs must always be considered first for minors and their p/lg and be actively pursued until release.
3. Family unity is to be highly factored in all detention-related decisions.
4. The BIOC are a primary consideration and may only be outweighed by other significant considerations such as public safety (i.e. flight risk, paragraphs R245(a) to (f), and danger to the public, section R246) or national security.
5. Detention may be considered when historic, consistent and willful breaches of IRPA or IRPR are demonstrated.
6. The BIOC assessment is to be conducted prior to any decision to detain or house a minor or separate a minor from their detained p/lg and should be conducted on a continual basis (subsection 8(2)).
7. A minor may be detained or housed if no suitable ATDs or AAMs can be found, provided that:
  - a) it is in the BIOC to be housed with their p/lg;
  - b) there are well-founded reasons to believe the minor is a danger to the public;
  - c) if identity is a serious concern, there are well-founded reasons to believe the minor or their p/lg may represent a risk to public safety and national security; and
  - d) the family is scheduled or can be scheduled for removal within seven days and has demonstrated a consistent pattern of non-compliance and willful breaches of conditions or violations of IRPA or IRPR, elevating the risk of them being unlikely to appear for removal.

## 7. THE BEST INTERESTS OF THE CHILD (BIOC)

Mental health evidence is clear that both detention and family separation have detrimental consequences for children's well-being. The BIOC are best achieved when children are united with their families in community-based, non-custodial settings, where possible.

1. On all detention decisions that affect minors, CBSA officers must consider the BIOC as a primary consideration as per section R248.
2. The BIOC are to be determined separately and prior to the decision to detain the p/lg. They need to be reviewed on an ongoing basis (including observations and day-to-day interactions) based on the legal situation and well-being of the minor and their p/lg.
3. The BIOC are to be determined on a case-by-case basis taking all relevant information related to the minor's situation into account.
4. A copy of the BIOC interview form (drafted for trial period) shall be provided to the p/lg and as appropriate to the IRB designated representative, child advocate, private counsel and Child Protection Services.
5. On the issue of handcuffing, please refer to section 10.4, points a to c.
6. There should be an assessment by a provincial authority that considers the child's welfare and the BIOC as applicable.

## 8. FAMILY UNITY

1. Every effort must be made to preserve the family unit for overall well-being and continuity of care.

2. Families must be released, with or without conditions, to the greatest extent possible. Where unconditional release is not possible, an ATD or AAM should be used.
  - a) When p/lg are detained, and public safety (i.e. flight risk, section R245, and danger to the public, section R246) and national security are not an issue, officers must make every effort to find an appropriate ATD or AAM.
  - b) When public safety (i.e. flight risk, section R245, and danger to the public, section R246) and/or national security are an issue, every effort shall be made to find an ATD or AAM that sufficiently mitigates the concerns.

Below are possible scenarios that may be encountered by CBSA officers:

Scenario 1 – When removal is not or cannot be scheduled within seven days, detention must be avoided and the family must be released using an ATD to the greatest extent possible.

Scenario 2 – May detain one parent and release the other with the minor. This may be considered when one p/lg is a danger to the public or a security concern such that an ATD for both parents is not appropriate.

3. Though it is crucial to maintain the family unit, there may be exceptional circumstances where it is not possible. When an ATD is not appropriate, CBSA officers shall work with the p/lg to find a solution for the temporary care of the minor, such as an AAM, if this is in the BIOC. Contact information of the organization and/or person charged with temporary care of the minor must be indicated in the minor's paper file as well as the AAM process that must be created in the National Case Management System (NCMS). Subject to their level of comprehension, the minor should be given contact information for Legal Aid and a Provincial Child Advocate (where available).

Below are additional scenarios that may be encountered by CBSA officers:

Scenario 1 – When one p/lg is deemed appropriate for release, while the other is not, the minor will join the released p/lg if this is in the BIOC.

Scenario 2 – When neither p/lg is deemed appropriate for release on an ATD, the minor may be released upon the p/lg's written consent on an AAM (e.g. relative, trusted friend/community member) or housed at an IHC with their detained p/lg if this is in the BIOC.

Scenario 3 – When neither p/lg is deemed appropriate for release and a relative or trusted friend/community member is not available to support the custody of the minor, the officer shall contact Child Protection Services for advice on the temporary care of the minor until one detained p/lg is released, or the minor shall accompany their p/lg at an IHC (where available) if it is in the BIOC.

Scenario 4 – Officers may detain the p/lg and house the minor at an IHC if removal is scheduled within seven days (where travel documents are in order) and release is not a viable option (e.g. historic, consistent and willful breaches of conditions or violations of IRPA or IRPR).

4. If a minor is separated from their family for custodial placement through an AAM, access to the p/lg must be facilitated. The CBSA officer must inform the minor of the steps being taken, unless

the provision of the information is contrary to the BIOC and compromises the safety and well-being of the minor.

## 9. CHILD PROTECTION SERVICES (CPS)

1. CPS are responsible for the safety, well-being and familial stability of children, which may involve investigations into abuse or neglect of children (see Annex C). They can also connect families to community resources to address issues like mental health, settlement and temporary accommodations and provide guidance and advice on the BIOC. Most CBOs are also equipped to provide these services.
2. CBSA officers shall consult the p/lg prior to contacting CPS unless the situation falls within the duty to report under child welfare legislation. Accordingly, CBSA officers must contact CPS if abuse, neglect or other serious concerns are suspected or identified in the BIOC interview or any time thereafter. Additional reasons to contact CPS are as follows:
  - a) trauma experienced by a minor;
  - b) safety issues identified while in custody due to abuse and/or neglect by p/lg; and
  - c) parents may be facing criminal charges and, due to the nature of the charges, may be separated from their children (i.e. incarcerated in a separate institution).

## 10. ARREST AND DETENTION OF A MINOR

1. Please refer to ENF 20 for details on arrest and detention. Regardless of the age of the person arrested, Notice of Arrest (report), Order for Detention (form), National Risk Assessment for Detention and Detainee Medical Needs forms must be completed for a detention made under section A55. Officers must clearly articulate reasons and grounds for arrest and detention when completing the documents and be mindful of the utmost importance of taking concise and complete notes supporting their decisions and actions.
2. The CBSA will continue to conduct the BIOC interview to inform the position taken at IRB reviews until release.
3. When possible, the initial decision maker who decides to arrest or detain the minor shall take the lead in the active case management of the minor's file throughout the immigration enforcement stream for the best case oversight.
4. CBSA officers must ensure the security, safety, and protection of the minor under arrest/detention. In addition,
  - a) minors shall not be handcuffed **except in extreme circumstances**. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a minor. Extreme circumstances are limited to danger to the public, threat posed to officers or the public and self-harm;
  - b) CBSA officers will not handcuff detained p/lg in front of their children, other than under extreme circumstances (as above) or if they have a violent criminal past; and
  - c) CBSA officers will not conduct personal searches or frisking of a detained p/lg in front of a minor other than under extreme circumstances (as above), or if they have a violent criminal past. Officers must make every effort to conduct searches outside the view of the minor, unless doing so would cause more distress to the child.



## 11. UNACCOMPANIED MINORS

1. Unaccompanied minors shall never be detained or housed at an IHC unless it is for an operational reason (e.g. POE arrival at 3:00 am, outside of normal business hours) and an ATD or AAM cannot be found. In the event that an unaccompanied minor is held at an IHC for more than 24 hours, a CBSA officer must conduct a BIOC interview for the purpose of release. Unaccompanied minors shall also have heightened supervision (IHC staff) and access to guards, NGO staff and other supports as necessary.
2. The CBSA will notify the CRC as soon as possible; refer to section 15.4.
3. If the presence of smugglers or traffickers is a concern, the matter must be discussed with CPS to ensure that adequate protection is provided (refer to Annex C).
4. In most cases, unaccompanied minors are to be released in the care of a CBO or CPS (e.g. local Children's Aid Society as appropriate) if they do not have a relative or trusted community link. While an unaccompanied minor is in their custody, the organization will make every effort to ensure that the minor meets the CBSA's reporting requirements. Contact information of the organization, relative or trusted community member charged with temporary care of the minor or an IRB designated representative or lawyer must be indicated in the minor's file and in NCMS via the AAM process.

## 12. HOUSING – ACCOMPANIED MINORS

1. Accompanied minors shall be housed at an IHC (where available) only if it has been deemed to be in the BIOC, and families must not be separated within the detention facility when possible. The CBSA officer must note the ATDs considered for one or both of the p/lg before concluding that housing was absolutely necessary for the minor and/or family unity.
2. The CBSA officer must explain to the p/lg that they may accept or refuse housing and that their decision will not affect their immigration case; interpreter services must be offered to the p/lg to enable clarity and full comprehension of the discussion. A CBSA supervisor or superintendent and the minor's p/lg must provide their written consent prior to housing at an IHC (consult local IHC intake forms).
3. Documentation and system data entry  
 Documentation must be completed for accompanied minors who are foreign nationals, permanent residents or Canadian citizens.
  - In NCMS, create a **Housed Process** in order to add notes on the minor's health condition and/or medical needs, including dietary.
  - Minors housed or placed in an AAM must be given a UCI to enable monitoring and tracking in the immigration detention system.
4. A p/lg may withdraw their consent at any time by informing the CBSA in writing. The CBSA may also withdraw their consent under extreme circumstances, such as:
  - inability of the p/lg to care for and ensure control of the minor, resulting in harm to the minor and subject to duty of care referral under child welfare legislation; or
  - an AAM becoming available for the accompanied the minor, even after the 48-hour detention review.
5. If a CBSA officer considers withdrawing consent, they must justify this in writing, discuss with the p/lg, and give them an opportunity to remedy the circumstances.
6. CBSA officers shall conduct a weekly case review to reassess ATDs/AAMs and the BIOC of accompanied minors.

## 13. SERVICES IN AN IHC

In accordance with international standards, IHCs offer a secure and sanitary environment, proper nutrition, access to fresh air, access to healthcare services (including psychology and psychiatric supports) and recreation. Furthermore,

1. Minors shall be housed with both p/lg to the greatest extent possible in order to preserve family unit.
2. The IHC shall adhere to national Standard Operating Procedures for accompanied and unaccompanied minors, and the IHC manager will be responsible for verifying that the national procedures are adhered to when a minor has been admitted for detention or housing.
3. By provincial laws, minors must go to school starting at the age of five or six and until they are between 16 and 18, depending on the province or territory. Qualified teachers will provide in-class education for minors who are at an IHC after seven days and until they are released.

## 14. TRANSPORTATION AND TRAVEL

The CBSA Enforcement Manual, Part 6, Chapter 8, Vehicular Transport of Persons under Arrest or Detention, is applicable to detained or housed minors. It guarantees the safety and security of individuals in CBSA custody. Operational Bulletin PRG-2015-34 Transportation of Non-Detained Persons in Agency Vehicles while Administering CBSA Program Legislation is also relevant. The p/lg is responsible for the care and control of their children; therefore, they must be kept with them at all times, including situations when the p/lg or minor must leave the IHC for various reasons: detention review, medical appointment, court proceeding, immigration examination, etc. NOTE: Section 10 applies to this section.

## 15. REPORTING AND NOTIFICATION

### 1. Operational Bulletin OPS-2017-03

All situations involving the detention, housing or separation of the family unit must be reported immediately to the Border Operations Centre (BOC) as a significant event under the incident reporting criteria "Child Welfare".

- a) The regional Single Reporting Tool (SRT) Operational Bulletin OPS-2017-03 to the BOC must contain the following information regarding the case:
  - i. tombstone data for the minor involved (UCI, age, gender, citizenship);
  - ii. UCI for accompanying parent or guardian (if minor is accompanied); and
  - iii. detailed synopsis of the case, including whether the minor was accompanied or unaccompanied, detained (and grounds for detention), housed (and housed with whom), or separated (including AAM) from a detained p/lg and the detention facility where they are held.
- b) The SRT must contain the information that was considered during the decision-making process:
  - o how the BIOC was assessed and what outcome of the assessment was (this is relevant for all instances involving minors, whether minors are detained, housed or separated from their detained p/lg).
- c) The SRT must also contain the information considered regarding actions taken to mitigate detention of minors or their p/lg:
  - o how and which ATDs and AAMs were considered in order to minimize the detention or housing of children or the separation of children from their p/lg.
- d) Once the BIOC has been conducted and ATDs and AAMs have been considered, and a minor is detained or housed in a detention facility or separated from a detained p/lg, the CBSA officer (decision maker) must report the case to the BOC as soon as possible.

- e) Superintendents and managers shall ensure that a notification is sent to the BOC as outlined above.

2. **Operational Bulletin PRG-2019-05**

Officers are required to record information in the NCMS using the “Alternative Arrangement for Minor” process. For data entry procedures on an alternative arrangement and associate accompanying party, please refer to the Operational Bulletin and Standard Operating Procedures. When a minor is placed in an alternative arrangement **directly from the POE**, it is imperative that the case details be sent to the office responsible for the NCMS data entry. For statistical purposes, information (e.g. new processes and updates) must be entered in a timely manner.

- 3. Aggregate reporting on minors will be part of the quarterly online publication of detention program statistics. It will also include the separation of minors.
- 4. Upon admission of an unaccompanied minor at an IHC, the CBSA officer will notify the CRC in writing as soon as possible by sending an email message to [IDMP@REDCROSS.CA](mailto:IDMP@REDCROSS.CA). In the subject line, indicate “Unaccompanied Minor” and the facility or location where the minor is being held. The CRC must inform the CBSA immediately if they intend to conduct a monitoring visit with the minor in order for the CBSA to obtain the required consent from CPS (as the authority for minors) in a timely manner for the visit.

## Annex C – Child Protection Services and Family Centres

- Atlantic
  - Nova Scotia Community Services Offices with Child Welfare Services (17 district offices)
  - New Brunswick Child Protection, 1-888-992-2873 or after-hours emergency services at 1-800-442-9799 (8 regional sub-districts)
  - Newfoundland and Labrador Child Protection Services (4 regional health authorities)
- Quebec
  - Association des centres jeunesse du Québec (16 administrative regions)
  - Centre jeunesse de Laval, 450-975-4000
  - Centre jeunesse de Montréal, 514-896-3100
  - Batshaw Youth and Family Centres (Montréal), 514-935-6196
  - Centre jeunesse de l'Estrie, 819-566-4121
  - Centre jeunesse de la Montérégie, 450-679-0140
  - Programme régional d'accueil et d'intégration des demandeurs d'asile (PRAIDA), 514-731-8531
- Northern Ontario
  - Ontario Association of Children's Aid Societies (Ottawa, Cornwall, Lansdowne and Prescott)
  - Ontario Association of Children's Aid Societies (Thunder Bay, Sault Ste. Marie and Fort Francis)
- Greater Toronto Area
  - Ontario Association of Children's Aid Societies (47 provincial societies)
  - Children's Aid Society of Toronto, 416-924-4640
  - Catholic Children's Aid Society of Toronto, 416-395-1500
  - Jewish Family and Child (Toronto), 416-638-7800
  - Peel Children's Aid Society, 888-700-0996
- Southern Ontario
  - Chatham–Kent Children's Services, 519-352-0440 (Chatham, Blenheim, Bothwell, Chatham, Chatham–Kent, Dresden, Erie Beach, Eriau, Highgate, Ridgetown, Thamesville, Tilbury, Wallaceburg, Wheatley)
  - Children's Aid Society of London and Middlesex, 888-661-6167 (Adelaide, Ailsa Craig, Caradoc, East Williams, Ekfrid, Glencoe, London, Lucan Biddulph, McGillivray, Metcalfe, Middlesex, Middlesex Centre, Mosa, Newbury, North Dorchester, Parkhill, Strathroy, Wardsville, West Nissouri, West Williams)
  - Children's Aid Society of Oxford County, 519-539-6176 (Blandford-Blenheim, East Zorra-Tavistock, Ingersoll, Norwich, Oxford, South-West Oxford, Tillsonburg, Woodstock, Zorra)
  - Family and Children's Services Niagara, 888-937-7731 (Fort Erie, Grimsby, Lincoln, Niagara, Niagara Falls, Niagara-on-the-Lake, Pelham, Port Colborne, St. Catharines, Thorold, Wainfleet, Welland, West Lincoln)
  - Family and Children's Services of St. Thomas and Elgin County, 519-631-1492 (Aylmer, Bayham, Belmont, Central Elgin, Dutton Dunwich, Elgin, Malahide, Port Stanley, Southwold, St. Thomas, Vienna, West Elgin, West Lorne)

- Sarnia-Lambton Children's Aid Society, 519-336-0623 (Alvinston, Arkona, Bosanquet, Brooke, Dawn-Euphemia, Enniskillen, Forest, Grand Bend, Lambton, Mooretown, Oil Springs, Petrolia, Plympton, Point Edward, Sarnia, Sombra, Thedford, Warwick, Wyoming)
- The Children's Aid Society of Haldimand and Norfolk, 519-587-5437 / 888-227-5437 (Delhi, Dunnville, Haldimand, Haldimand-Norfolk, Nanticoke, Norfolk, Simcoe, Townsend)
- Windsor-Essex Children's Aid Society, 800-265-5609 (Amherstburg, Essex, Kingsville, Lakeshore, LaSalle, Leamington, Pelee Island, Tecumseh, Windsor)
- **Prairies**
  - Alberta Children's Services, 1-800-387-5437 (several service delivery locations)
  - Saskatchewan Social Services Offices (several locations), after-hours crisis centres: Prince Albert – 306-764-1011, Saskatoon – 306-933-6200, Regina – 306-569-2724
  - Manitoba Child and Family Services, 1-866-345-9241 (several Designated Intake Agencies)
- **Pacific**
  - Ministry of Children and Family Development (13 offices)
  - Ministry of Children and Family Development (Vancouver), 604-660-4927 or 310-1234

## Annex D – Provincial Definitions of a Minor

In Canada, the definition of a minor child varies by province as indicated in the table below.

| Province                     | Definition of minor child   | Definition of minor for child protection purposes |
|------------------------------|---|---|
| <u>British Columbia</u>      | Person under 19 years   | Same  |
| <u>Alberta</u>               | Person under 18 years   | Same  |
| <u>Saskatchewan</u>          | Unmarried person under 16 years   | Same  |
| <u>Manitoba</u>              | Person under 18 years   | Same  |
| <u>Ontario</u>               | Person under 18 years   | “child” means a person under the age of 16        |
| <u>Quebec</u>                | Person under 18 years   | Same  |
| <u>Nova Scotia</u>           | Person under 19 years   | “child” means a person under the age of 16        |
| <u>New Brunswick</u>         | Person under 19 years   | “child” means a person under the age of 16        |
| <u>Newfoundland</u>          | Person under 16 years (youth defined as a person who is 16 years or older, but under the age of 18) | Same  |
| <u>Prince Edward Island</u>  | Person under 18 years   | Same  |
| <u>Northwest Territories</u> | Person under 19 years   | “child” means a person under the age of 16        |
| <u>Yukon</u>                 | Person under 19 years   | “child” means a person under the age of 16        |
| <u>Nunavut</u>               | Person under 19 years   | “child” means a person under the age of 16        |